Supreme Court, U. S.
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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-624

FRANK LYON COMPANY, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

VOLUME II

(Pages 313-748)

PETITION FOR WRIT OF CERTIORARI FILED NOVEMBER 3, 1976
CERTIORARI GRANTED FEBRUARY 22, 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-624

FRANK LYON COMPANY, *Appellants*

v.

UNITED STATES OF AMERICA, *Appellee*

Petition for Writ of Certiorari Filed November 3, 1976

Certiorari Granted February 22, 1977

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P. Ex. 1

WORTHEN BANK AND TRUST COMPANY
ESTABLISHED 1877

LITTLE ROCK, ARKANSAS

August 26, 1967

Mr. O. O. Wyrick, Vice President
Federal Reserve Bank of St. Louis
Post Office Box 442
St. Louis, Missouri, 63166

Dear Mr. Wyrick:

The attached brochure and statements reflect information relating to the construction by Worthen Bank of a new main office, office building and parking facility to cost between $8,500,000.00 and $9,000,000.00. The building site is being acquired from Urban Renewal and is located on Capital Avenue between Louisiana and Center Streets, comprising approximately three-quarters of a block.

Taking $9,000,000.00 as the total construction cost, it is contemplated that we will issue $4,000,000.00 non-convertible debentures, maturing in 25 years, to be retired by a sinking fund beginning the eleventh year. The balance of the funds would be raised by the negotiation of a mortgage loan for $5,000,000.00 through a wholly owned subsidiary with principal payments beginning the fourth year.

Interest payments on debentures at an assumed rate of 6½ would be $260,000.00 per annum and interest payments on the mortgage loan until principal reductions are begun, assuming a 6½ per annum rate would be $325,000.00 for a total interest cost during the first three years of $585,000.00.

The combination of debentures, totaling $4,000,000.00 which will be used to purchase stock of the subsidiary, and a mortgage loan negotiated by the subsidiary will pay the entire cost of land and building totaling $9,000,000.00.

Operating statements submitted reflect the results of the occupancy of the new building by Worthen Bank in the middle of 1969, by projecting growth in earnings and expenses for the period 1968 through 1973 deducting therefrom the occupancy expense of present building and adding expense of occupancy in the new building. We also project cost of space vacant until building is fully occupied by tenants as a bank expense. The pro forma statement of the subsidiary is based on estimates of tenant occupancy after approximately a three year period and highlights the need for adjusting the banks rental payments to meet varying costs of the subsidiary. The pro forma balance sheets merely show the results of issuing the debentures by the bank and the placing of the mortgage by the subsidiary. We propose to sell our present main office facility, hopefully before we move into the new building. The present facility, including fixtures and equipment, is carried on our books at a depreciated value of $786,526.29.

The attached schedule of the cost of construction are the budgeted figures agreed upon by the architects, Erhart, Eichenbaum, Rauch & Blass, and the contractors, being Matson Construction Company of Little Rock, Ark. and Bellows Construction Company of Houston, Texas, in consultation with Carl E. Morse Company, Consultants, of New York City.

We expect to begin construction as soon as we have received approval from you and have arranged the financing, subject of course, to approval by the Board of Directors and State Supervisory Authorities. The construction is expected to be completed within 18 months from the date it is begun.

Your early consideration will be appreciated and of course, we will promptly furnish any additional information you may require.

Sincerely,

/s/ Edward M. Penick
President

Worthen Bank and Trust Company

Construction Cost		
Bank & Office Building, 238,255 gross sq. ft. @ 22.82		5,436,600
5 Level Parking, 110,880 gross sq. ft. @ 6.00		665,280
Architects Fee—estimated		259,000
Financing Charges—estimated		378,000
Consultant Fees		162,000
Land		
60,650 sq. ft. @ 23.53 per sq. ft.		1,425,000
Estimated Project Cost		8,325,880
Estimated Cost of Equipment		
Vault Equipment	32,000	
Under Counter Equip.	12,000	
Pneumatic Equip.	10,000	
T.V. Teller	125,000	
Kitchen-dining Equip.	150,000	329.000
Carpeting	42,000	
Drapes	20,000	
Built-ins	75,000	
Furniture	80,000	217,000
		546,000
Total Construction, Financing & Equipment Cost		$6,871,880

Worthen Bank and Trust Company

Statement of Earnings, Pro Forma (Amount in Thousands)

Sale of Non-Convertible Debentures $4,000,000 @ 6½%

Mortgage Through Subsidiary $5,000,000 @ 6½%

December 31, 1966 Net Operating Earnings adjusted for Interest Cost of Financing

	Present Worthen Statement	Pro-Forma Worthen Statement	Pro-Forma Real-Estate Subsidiary	Adjustments	Pro-Forma Consolidated Statement
Operating Income:					
Int. & Div. on Sec.	985	985			985
Int. & Div. on Loans	5,359	5,359			5,359
Service Cgs. on Loans	39	39			39
Service Cgs. on Dep. Accounts	528	528			528
Other Service cgs., comms., fees & Collection charges	49	49			49
Fee-Trust Department	170	170			170
Other Income	156	156			156
Rental Income:					
Worthen Bank			565(5)	(565)	
Others			281(6)		281
Parking			66(7)		66
Total	7,285	7,286	912		7,633
Operating Expense:					
Salaries	1,850	1,850			1,850
Other Personnel Expense	402	402			402
Interest	1,911	2,171(1)	325(3)		2,496
Occupancy	296	669(2)	587(4)	(565)	691
Furniture & Equip.	308	308			308
Other Expenses	1,179	1,179			1,179
Total	5,946	6,379	912		6,926

Operating Income over Expense	1,340	707	—0—		707
Applicable Federal Income Tax	367	51(8)	—0—		51
Net Operating Earnings	973	656			656

(1) Increased by $260,000 interest on Capital Notes.

(2) Increased by $565,000 which is rental paid Subsidiary on new building less $192,321.37 decrease in occupancy expense on old building & motor bank.

(3) Increase on First Mortgage Note.

(4) Depreciation of $175,000.00 and occupancy expense on new building of $412,481.00.

(5) Rental paid by Worthen to Subsidiary, plus figures used to make Subsidiary non-profit.

(6) Rental income from tenants 78,062 sq. ft. @ 4.50 per with 30% occupancy.

(7) Parking rental income (275 cars x 1.00 x 28 days x 12 months.

(8) Reduced taxes 50% of the additional $633,000 expense or $316,000 tax reduction over last period.

Worthen Bank and Trust Company

Pro Forma Balance Sheet

Adjusted to 6-30-67 • Balance Sheet as of 6-30-69
(0's omitted)

	6/30/67	Adjustments for financing	Completion of bldg. 6/30/69
Cash	38,488		38,488
U.S. Government Obligations	13,703		13,703
Obligations U.S. Instrumentalities	1,119		1,119
State & Municipal Obligations	11,527		11,527
Loans & Discounts	87,538		87,538
Loans Guaranteed by CCC	6,440		6,440
Stock in Federal Reserve	270		270
Bank Bldg. Vault & Equipment (1)	1,833		1,833
Cash Value Life Ins. —Officers	149		149
Investment in Subsidiary		4,000	4,000
Other Resources	328		328
Total Resources	161,395		185,395
Capital Stock	4,000		4,000
Surplus	5,000		5,000
Capital Notes		4,000	4,000
Undivided Profits & Reserves	2,496		2,496
Reserve for Unearned Interest	2,704		2,704
Deposits	147,195		147,195
Total Liabilities	161,395		185,395

Note: (1) This includes present main-office land, building & equipment carried @ depreciated amount of $786,-526.29.

Worthen Bank and Trust Company

Pro Forma Operating Statement 1968-1973

(Amount in Thousands)

	1968	1969	1970	1971	1972	1973
Operating Earnings	9,300	10,400	11,400	12,450	13,500	14,500
Operating Expenses (5)	7,600	8,500	9,450	10,400	11,300	12,200
Profit before taxes & additional cost allocable to new building	1,700	1,900	1,950	2,050	2,200	2,300
	1,700	1,900	1,950	2,050	2,200	2,300
Plus: Occupancy Expense old building		90	192	192	192	192
	1,700	1,990	2,142	2,242	2,392	2,492
Less: Interim Financing Interest	200,00	178				
Rental		300	557	557	557	557
Vacant Tenant Space		150	144(2)	108(3)	72(4)	72
Adjusted Parking		25	16			
Total Deductions	200,000	653	717	665	629	629
Net before taxes	1,500	1,337	1,425	1,577	1,763	1,863
Taxes (1)	400	356	379	419	469	496
Net Operating Earnings	1,100	981	1,046	1,158	1,294	1,367

(1) Taxes are figured at 26.6% of Net Profit before taxes.

(2) 40% of tenant rental—331,000

(3) 30% of 361,000

(4) 20% of 361,000

(5) Interest on Debentures included.

Worthen Bank and Trust Company

Real Estate Subsidiary

Pro Forma Balance Sheet

Assets	
Land	$1,425,000
Bank Building	$7,575,000
Total Assets	$9,000,000
Liabilities	
Mortgage Note	$5,000,000
Capitalization	
Capital Stock	$4,000,000
Total Liabilities	$9,000,000

Worthen Bank and Trust Company

Real Estate Subsidiary

Pro Forma Operating Statement— 3 Years After Occupancy

INCOME			
Bank (1)	114,549 @ $4.86 per sq. ft.		567,054
Tenant	78,062 @ $4.627 per sq. ft.		361,248
Parking	110,880 (275 cars x 1.00 x 20 days x 12 mos.)		66,000
			984,302
Less:	15% vacancy factor tenant space 78,062 x 15% x 4.627		54,177
Estimated Annual Income			$930,125
EXPENSES			
Bldg. Operation 192,611 sq. ft. @ 1.50		288,916	
Parking Operation 110,880 sq. ft. @ .12		13,305	
Real Estate Taxes (estimated)			
Land	19,760		
Building	90,500	110,260	412,421
Estimated Net Income before Depreciation			$517,644
Depreciation (50 yr. st. line)			151,500
Net Income			$366,144

NOTE: (1) Amortization of $5,000,000. loan @ 6½% for 27 years is $393,500 per year. This exceeds rental being estimated by bank by $27,356. Adjustments would need to be made in bank rental paid to subsidiary for any losses of subsidiary.

P. Ex. 2

WORTHEN BANK AND TRUST COMPANY
ESTABLISHED 1877

LITTLE ROCK, ARKANSAS

September 1, 1967

Mr. O. O. Wyrick, Vice President
Federal Reserve Bank
P.O. Box 442
St. Louis, Missouri 60602

Dear Mr. Wyrick

I have discussed with Mr. Harvel Adams, Arkansas State Bank Commissioner, and Mr. Kenneth Sanders, assistant bank commissioner, financing plans on our new building which would involve complete abandonment of the plans Dick Gates and I discussed with you. Under the new proposal we plan to put a portion of the new building cost on our books and handle the balance totaling $7½ million on a sale and leaseback arrangement.

I am enclosing a letter to Mr. Adams which outlines this plan and a copy of the operating figures which reflect the effect of this plan on our operations.

We are presently in negotiations with Goldman & Sachs Company of New York to handle the sale and leaseback.

Mr. Adams has indicated to us that he can give us his approval on this plan right away and we have tentatively scheduled a ground breaking ceremony for Friday afternoon, September 15. I am hopeful that your approval can be received so that we may go ahead with the plans for this ground breaking ceremony as scheduled.

I am also enclosing leasing brochures and a copy of excerpts from the report of Landauer & Associates of New

York regarding the possibility of our leasing this size building.

These items were discussed at our meeting this week, and I promised to send you copies.

Very truly yours,

President

P. Ex. 3

September 12, 1967

Mr. O. O. Wyrick, *Vice President*
Federal Reserve Bank
P. O. Box 442
St. Louis, Missouri 60602

Dear Mr. Wyrick:

In line with our conversation regarding the proposed financing of our building by using the sale and leaseback $7½ million and by putting the balance of the cost of the parking garage and land under the parking garage on our statement, I am submitting to you the estimated cost of this project. These costs have been revised from those previously furnished you in my letter of September 1st by dividing the architect fees, consultant fees, and finance charges between the two buildings, that is the sale and leaseback bank office building and the parking garage.

The item of finance charges is an estimated figure, as we will not be financing any of the building cost on our own statement, but will arrange for the owners-lessors to finance the building themselves. This will work in the following manner. We will convey title to the land on which the bank building and office building will be built to the investors that will own the building and lease it to us. They will put up the money for the cost of construction in an escrow account with a trustee bank and we will take the money down as we need it for construction costs. We will be obligated to pay the difference between what the money costs the investors, if they have to borrow it elsewhere, and what they are able to earn on it as a short term investment from the escrow account. So our financing charges really resolve themselves into being the difference between these two costs. By handling the construction costs in this manner it will at no time become an asset of the

bank and we will not be required to handle an interim financing arrangement.

I would appreciate your approval of the plan as we have outlined it here and in our previous correspondence.

Very truly yours,

President

P. Ex. 4

FEDERAL RESERVE BANK OF ST. LOUIS
P. O. BOX 442
ST. LOUIS, MISSOURI 63166

O. O. Wyrick
Vice President

September 13, 1967

Mr. Edward M. Penick, President
Worthen Bank & Trust Company
P. O. Box 1681
Little Rock, Arkansas 72203

Dear Mr. Penick:

This refers to your letters of September 1 and September 12, 1967 seeking approval of your plans for the construction of a new bank building. We also acknowledge receipt of copy of letter dated September 1 to Mr. H. C. Adams, State Bank Commissioner, seeking his approval.

It is understood that the original proposal, outlined in your letter of August 26, has been abandoned.

As we understand it, the bank and office building is to be constructed and owned by a non-affiliated corporation and leased to the bank at an annual rental cost of approximately $584,250. The lease would be on a long-term basis with an option to purchase the building after fifteen years at an agreed upon figure. The cost of construction is estimated at $6,532,650 which together with the land cost of $965,000 would make a total investment by the owner of $7,497,650. It is understood that the bank will have no financial interest in the building and will furnish none of the funds for its construction.

It is further understood that the bank will construct a parking garage at an estimated cost of $1,001,350 on land

purchased for $460,000 for a total cost of $1,461,350. This investment when added to the present carrying value of leasehold improvements, present bank premises and preliminary cost of new bank building in the total amount of $1,695,768 would result in a total investment of $3,157,118 in bank premises by the bank, exclusive of furniture, fixtures and equipment now carried on the bank's books at $137,326 and $546,000 estimated cost of additional investment in such assets. We understand that the investment in bank premises of $3,157,118 is to be reduced from sale of present bank building estimated at $600,000 which would reduce the bank's total investment in bank premises to $2,557,118 which combined with investment in furniture, fixtures and equipment of $683,326 would result in a total investment in fixed assets of $3,240,444.

Since the total investment in bank premises would not exceed the bank's capital stock of $4,000,000, the approval of the Board of Governors, pursuant to the provisions of Section 24A of the Federal Reserve Act, is not required and this office will interpose no objection to the expenditure. However, the additional investment in fixed assets adds considerable pressure to a capital account that is not relatively strong and the directors are urged to review the bank's capital position frequently, to continue to conserve earnings in order that the capital structure may be strengthened and to provide additional capital funds upon completion of the building program should a review at that time warrant such action.

Very truly yours,

/s/ O. O. WYRICK
O. O. Wyrick
Vice President

P. Ex. 5

WORTHEN BANK AND TRUST COMPANY
ESTABLISHED 1877

LITTLE ROCK, ARKANSAS

September 1, 1967

Mr. H. C. Adams
State Bank Commissioner
National Old Line Building
Little Rock, Arkansas

Dear Mr. Adams:

Previously I submitted to you a plan for financing our new building under which we had originally proposed to issue $4 million in debentures and handle the balance of the construction cost of $5 million on a real estate mortgage loan. Due to the statutory limitations on the rate of interest we can pay on the debentures, we have been unable to locate a purchaser of the debentures at an interest figure of 6% or less. Consequently, this plan of financing must be abandoned.

I would like your approval of a plan whereby we would carry on our bank books the cost of the new equipment and leasehold improvements amounting to $1,325,000 and the cost of the parking garage and land on which the parking garage will be situated amounting to $1,195,000, giving us a total new investment amounting to $2,520,000 in land, garage, and leasehold improvements. We would carry this on our books, which with the amount we have previously invested in this category, will give us a total investment of $4,353,000 in land, buildings, and leasehold improvements. This figure includes our present land and building at Fourth and Main Streets, which we plan to sell. It is presently carried on our books at $600,000. Upon the completion of the sale we would then have in this category on the balance sheet $3,753,000, which is 32.6% of our capital, surplus, undivided profits, and reserves. I am enclosing a pro forma statement of this bank as of June 30, 1967, giving affect to this additional investment.

The balance of the cost of construction of our building amounting to approximately $6 million plus $965,000 on the land would be handled on a sale and leaseback basis, which would not exceed a maximum of $7½ million. We would have the right to repurchase this building after 15 years at a previously agreed upon figure and the land at the cost at which it was put in. We are in the process of negotiating with Goldman & Sachs Company of New York City the details of this sale and leaseback arrangement. I am enclosing a copy of a pro forma operating statement and projections for the next five years on the funds necessary for us to carry this sale and leaseback arrangement including the projected income we would receive from rents from this new bank building.

We realize that the sale and leaseback arrangement may be slightly more expensive in the long run. However, we are of the opinion that the advantages it offers us by not tying down our capital in land and building leaves us more leeway in the management of our bank and keeping our funds more profitably employed.

Previously I furnished you background information on the history of the bank and general economic conditions in our city and this same information would suffice for our request at this time for your approval of this plan of financing our new building.

I will be most happy to furnish you any other information you may need, as we are most anxious to start construction as quickly as possible.

Very truly yours,

President

EMP/mab

Enc. (1) Total Project Cost
(2) Pro Forma Balance Sheet as of 6/30/69
(3) Bank Building Pro Forma Operating Statement —1973
(4) Pro Forma Operating Statement 1968-1973

WORTHEN BANK AND TRUST COMPANY

TOTAL PROJECT COST

Cost of Bank Office Building & Land—Financed by Sale-Leaseback

Construction Cost	
Bank & Office Building—	
296,623 gross sq. ft. @ 20.23	6,000,000
Land	
41,050 sq. ft. @ 23.53 per sq. ft.	965,000
Estimated Cost of Bank, Office Building & Land	$6,965,000

Investment in Parking Garage, Furniture & Fixtures & Leasehold Improvements (June 30, 1967)

Leasehold Improvement	462,990
Bank Premises (Land & Building)	1,144,037
Furniture, Fixtures & Equipment	137,326
Preliminary Cost of New Bank Building (architects fees, consultants)	88,741
Total Present Investment	1,833,094
Sale of Present Building	—600,000 (1)
Total Investment in Bank & Premises	1,233,094

Additional Items to Be Included in Bank's Assets

Land (parking garage)		
19,600 @ 23.53 per sq. ft.		460,000
Parking Garage		
122,500 sq. ft. @ 6.00 per sq. ft.		735,000
Additional Investment in Furniture, Fixtures & Equipment		
Vault Equipment	32,000	
Under Counter Equip.	12,000	
Pneumatic Equip.	10,000	
T.V. Teller	125,000	
Kitchen-dining Equip.	150,000	
Carpeting	42,000	
Drapes	20,000	
Built-ins	75,000	
Furniture	80,000	546,000
Leasehold improvements		
Architects Fee	259,000	
Financing Charges	378,000	
Consultants Fee	162,000	779,000
Total Balance Sheet Investment in Bank & Premises		3,753,094 (2)

(1) Present bank building sold at book value of $600,000.00.
(2) Additional Investment in Leasehold Improvement since 6/30/67 estimated at $300,000.00.

Enclosure 1

WORTHEN BANK AND TRUST COMPANY

PRO FORMA BALANCE SHEET

Adjusted to 6-30-67 • Balance Sheet as of 6-30-69
(0's omitted)

	6/30/67	Completion of bldg. 6/30/69
Cash	38,488	38,488
U. S. Government Obligations	13,703	13,703
Obligations U.S. Instrumentalities	1,119	1,119
State & Municipal Obligations	11,527	11,527
Loans & Discounts	87,538	87,538
Loans Guaranteed by CCC	6,440 (1)	4,520
Stock in Fed	270	270
Bank Bldg., Vault & Equipment	1,833	3,753
Cash Value Life Ins.—Officers	149	149
Other Resources	328	328
Total Resources	161,395	161,395
Capital Stock	4,000	4,000
Surplus	5,000	5,000
Undivided Profits & Reserves	2,496	2,496
Reserve for Unearned Interest	2,704	2,704
Deposits	147,195	147,195
Total Capital & Liabilities	161,395	161,395

(1) Decreased Commodity Credit Corp. loan by additional investment carried in Bank Bldg., Vault & Equipment.

Enclosure 2

Worthen Bank and Trust Company

Bank Building

Pro-Forma Operating Statement—1973

Income			
Tenant (1)—119,380 sq. ft. @ 4.75 per			567,055
Parking—122,500 sq. ft.			
312 x 1.00 x 20 days x 12 months			74,880
			641,935
Less: 15% vacancy factor tenant space			
119,380 x 15% x 4.75			85,058
Estimated Annual Income			556,877
Expenses			
Building operation			
119,380 sq. ft. @ 1.50		179,070	
Parking: 122,500 sq. ft. @ .12		14,700	
Real Estate Taxes (estimated)			
Land	19,760		
Building	90,500	110,260	304,030
Net Income			252,847
Less:			
Lease Payment to Investor			—584,250
Net Income (Loss)			—331,403
Net rental per ft. for bank to occupy new bldg. (114,549 sq. ft.) $2.893 per sq. ft.			
Cost to occupy new building			331,403
Cost to occupy present quarters			192,321
Net Increase in occupancy cost			139,082

(1) Bank to occupy 114,549 sq. ft. including all public areas and dining facilities.

Enclosure 3

Worthen Bank and Trust Company

Pro Forma Operating Statement 1968-1973

(Amount in Thousands)

	1968	1969	1970	1971	1972	1973
Operating Earnings	9,300	10,400	11,400	12,450	13,500	14,500
Operating Expenses	7,600	8,500	9,450	10,400	11,300	12,200
Profit before taxes & additional cost allocable to new building	1,700	1,900	1,950	2,050	2,200	2,300
Plus:						
Occupancy Expense old building		96(1)	192	192	192	192
	1,700	1,996	2,142	2,242	2,392	2,492
Less:						
Interium Financing Cost	200	178				
Lease payment		292(2)	584	584	584	584
	1,500	1,526	1,558	1,658	1,808	1,908
Plus:						
Income from Building		27(3)	110(4)	167(5)	224(6)	252(7)
Net before taxes	1,500	1,553	1,668	1,825	2,032	2,160
Taxes(8)	399	413	444	485	541	575
Net after taxes	1,101	1,140	1,224	1,340	1,491	1,585

(1) Assumes occupancy in new building for 6 months
(2) Assumes 6 month lease payment on new building
(3) Assumes 6 months operation of building with 50% vacancy factor on tenant space; full operation of parking facility.
(4) 40% vacancy factor on tenant space
(5) 30% vacancy factor on tenant space
(6) 20% vacancy factor on tenant space
(7) 15% vacancy factor on tenant space
(8) Taxes are computed at 26.6% of Net Profit before taxes

Enclosure 4

P. Ex. 6

ARKANSAS
STATE BANK DEPARTMENT

H. C. Adams
Commssioner

CITY OF LITTLE ROCK

September 5, 1967

Mr. Edward M. Penick, President
Worthen Bank and Trust Company
Little Rock, Arkansas

Dear Mr. Penick:

Receipt is hereby acknowledged of your letter of September 21, outlining plans and procedure in constructing new building on property recently purchased by your bank for this purpose.

I interpose no objections to the plans as proposed and you have this Department's approval with the understanding that investment in parking garage will be charged off and amortized over a twenty year period, and that other investments in furniture, fixtures and leasehold improvements will be charged off and amortized over a ten year period and that title will be vested in Worthen Bank and Trust Company subject to no liens. It is noted in your projection cost that in the end, the total cost of land, building and leasehold improvements will aggregate $4,353,000.00, and upon the sale of the present land and building that you own at 4th and Main Street which is carried at $600,000.00 and will reduce this category to $3,753,000.00.

Estimated cost for construction of bank office building is estimated at $6,976,000.00, and would not exceed maxi-

mum of $7,500,000.00 and would be handled on a sale and leaseback basis. This is agreeable with this Department with the understanding that you would have the right to repurchase this building after fifteen years at agreed upon figure and the land at the cost at which it was, not to exceed $965,000.00.

Very truly yours,

/s/ H. C. ADAMS
H. C. Adams
State Bank Commissioner

P. Ex. 7

September 12, 1967

Mr. H. C. Adams
State Bank Commissioner
National Old Line Insurance Building
Little Rock, Arkansas

Dear Mr. Adams:

Mr. Wyrick, vice president of the Federal Reserve Bank, called today and wanted us to revise the figures of our total project cost that we had previously furnished you.

He requested us to divide the items of architect fees, finance charges, and consultant fees into those parts chargeable to the bank-office building and those parts chargeable to the parking garage. We have done this and I am enclosing a breakdown showing this allocation of these fees which is different from that previously furnished you.

Mr. Wyrick also wanted assurances from us that we would not handle the construction of this building on our statement at anytime by using a direct interim financing plan. We have assured him that the owners-lessors of the land can finance the construction of the building themselves and we will only be obligated to pay the cost of carrying the funds used in this construction period.

I am enclosing a copy of my letter to Mr. Wyrick, which I thought you would like to have for your files. If you have any questions, please call me.

Very truly yours,

President

P. Ex. 8

ARKANSAS
STATE BANK DEPARTMENT

H. C. Adams
Commssioner

CITY OF LITTLE ROCK

September 13, 1967

Mr. Ed Penick, President
Worthen Bank & Trust Company
Little Rock, Arkansas

Dear Mr. Penick:

I have your letter of September 12 in which you request several changes be made in the project cost of parking garage, furniture and fixtures and leasehold improvements.

I have no objection to these changes and you are authorized to proceed in accordance with your title project cost as presented to me in your letter of September 12.

Kindest personal regards, I am

Yours very truly,

/s/ H. C. ADAMS,
H. C. Adams
State Bank Commissioner

P. Ex. 9

WORTHEN BANK AND TRUST COMPANY

SALE AND LEASEBACK

Outline of Proposed Principal Lease Terms

Property: An 18-story office tower rising out of a ground floor banking space with drive-in banking facilities, to be constructed on 41,050 square feet of land in downtown Little Rock, Arkansas.

Interim Lease Term: From date of closing until the earlier of (1) 10 months after completion of the building or (2) ————————, 1970, except as that date may be extended by the number of days delay in construction caused by strikes or other events of force majeure.

Primary Lease Term: 25 years from the end of the Interim Lease term; at the end of the Primary Lease Term the Bank either will exercise a 10-year renewal option or will make an offer, which may be rejected by the owner, to purchase the property for 20% of its original cost.

Renewals: After the ten year renewal term, the Bank will have eight consecutive 5-year renewal terms to provide for use and occupancy for up to 75 years.

Rent: A. During the Interim Lease Term, rent will commence on the completion date and will be payable quarterly in amounts equal to —% (the interest rate on the required financing) of the completed cost of the property.

B. During the Primary Lease Term, rent will be payable quarterly in arrears in an annual amount equal to —% of the cost (assuming land cost of $965,000, building cost of $6,535,000 and 6¾% interest rate on

the required borrowing, rent will be 7.619%, or $571,430 annually).

Renewal Rents: Rent during the renewal terms will be as follows:

Years of Occupancy	*Annual Rent as a % of Original Cost*
26-35	3.00%
36-40	2.25%
41-45	1.50%
46 and thereafter	1.00%

Completion Agreement: The Bank will complete the construction of the building so that the completion date will occur not later than ...., 1969, except as such date may be extended by the number of days of construction time lost because of strikes or other events of force majeure, the completion date shall not have occurred on or before ....., 1971, the Bank will offer to purchase the land and building. Such offer may be rejected, in which even the Primary Lease Term will commence on that date and the Lease will remain in force and effect.

Net Lease: The Bank will have the same responsibilities in regard to the property as if it had complete ownership. The Lease will be completely "net" in that the Bank will pay as additional rent all expenses in connection with the property including, without limitation, real estate taxes, assessments, insurance premiums, costs of operation, repair and maintenance, and other charges related to use or occupancy.

Use and Occupancy: The Bank will be permitted to use the Property for any lawful purpose and will maintain

the Property in good condition subject to normal wear and tear. It is anticipated that part of the office space will be subleased to others and, in addition, the Bank may assign the Lease or sublet the Property providing that no such assignment or sublease shall affect or reduce any of its obligations as Lessee.

Property Additions or Improvements: The Bank will have the right to make additions and improvements to the Property from time to time, which additions and improvements will become the property of the owner at the end of the lease period, if not removed prior thereto. If the amount of such additions or improvements to the Property exceeds $..... during any two-year period, the Bank may request the owner to pay for these and owner will agree to do so. In the event that the owner pays for any such additions or improvements, rent will be increased to amortize the cost with interest over the remaining lease term. The interest cost will be then-current rates, as agreed upon by the Bank and the owner, and the owner will agree to accept or equal any interest cost which may be arranged by or offered through the efforts of the Bank.

Economic Abandonment: If, at any time after the end of the tenth year of the Primary Lease Term, in the opinion of the Bank, the Property no longer is suitable or economic for use in its operations, the Bank may terminate the Lease. The notice of termination must be accompanied by an offer to purchase the Property for an amount approximately equal to the remaining unamortized cost. The owner may reject that offer. If it is accepted, the Bank must purchase the property but must discontinue use thereof and make appropriate provisions for its disposition.

Condemnation or Casualty: In the event of a condemnation or a casualty, the Bank will restore or repair the property and will continue rental payments unabated

and the Bank will receive the condemnation award or the insurance proceeds; provided, however, that in the event of a condemnation or casualty of such nature that the Property no longer is usable by the Bank as determined by its Board of Directors, the Lease can be terminated. Notice of termination must be accompanied by an offer to purchase the Property for an amount approximately equal to the remaining amortized cost. This offer may be rejected. If accepted, the Bank will receive the condemnation award or insurance proceeds.

Purchase Options: The Bank will have options to purchase the property as follows:

End of Year	*Purchase Option as % of Original Cost*
15	72%
20	63%

(These amounts are based on an assumed land cost of $965,000 and building cost of $6,535,000.) In addition, the Bank will have an option to purchase the property at the end of the Primary Lease Term for an amount equal to the greater of fair market value or 20% of the original cost of the property. Thereafter the Bank will have options to purchase the property at fair market value at the end of each renewal period.

Investment Tax Credit: Any investment tax credit will be passed through to the Bank.

GOLDMAN, SACHS & Co.

P. Ex. 10

WORTHEN BANK AND TRUST COMPANY

PROPOSED FINANCING

Submitted By: Stephens, Inc.

Revised: October 27, 1967

General Description: The proposed method to be used to finance the Bank's new building is a sale-leaseback of the building.

Amount of Financing: The sale-leaseback financing proposed will provide $7,500,000.

Cost of Financing: Stand-by fees, legal, printing, and other direct costs of financing to be absorbed by the Bank.

Lease Provisions: In general, there will be a complete "net" lease.

Interim Term: With First National City as negotiated at cost.

Primary Term: 25 Years beginning at the end of the interim lease term.

Renewal Options: Eight 5-year renewal options with rent at 4% of original loan ($7,500,000) or $300,000 per year.

Annual Rental: The annual rent during the primary lease term will be $583,000 payable quarterly for the first 11 years of the lease, and beginning the 12th year rent will be $612,750.00.

Land: All land owned by Worthen Bank "involved in the new building project" will be leased to the Corporation "owning" the building for a period of 80 years.

Sales Taxes and Investment Credit: All savings on State Sales Taxes and all investment credit will be passed on to Worthen Bank.

Stand-By Fee: None.

Commitment Fee: 1%—Bank can escrow Government Bonds and receive income from the bonds during the interim period. At closing of permanent loan, the escrow account will be liquidated and the bonds returned to Worthen Bank.

Purchase Options: The Bank will receive options to repurchase the building at the end of the 11th, 15th, 20th, and 25th year as shown:

YEAR OF OPTION	MORTGAGE BALANCE	PURCHASE PRICE*
11th	$5,517,275.75	$6,225,000
15th	$4,426,274.78	$5,325,000
20th	$2,580,069.43	$3,800,000
25th	—0—	$2,850,000

* The above purchase price assumes that Worthen Bank will continue the mortgage loan with New York Life for the balance of the term of the loan, and the Bank assumes any penalty imposed by the lender for prepayment of the balance of the loan.

Summary of Redemption Restrictions and Prepayment Penalties By New York Life: Non-refundable for eleven (11) years from funds borrowed at lower interest rate. Refundable beginning the 11th year at 103, decreasing ¼ of 1% per year to 101 and remaining at 101 for the balance of the term of the loan. Refundable after the 11th year at 101 from excess earnings by Worthen Bank.

All terms and conditions outlined above are subject to our ability to borrow the necessary funds from New York Life.

P. Ex. 11

FRANK LYON COMPANY

October 30, 1967

Mr. Ed Penick, President
Worthen Bank & Trust Company
401 Main Street
Little Rock, Arkansas 72201

Dear Ed:

In our prior conversations, I have stated a definite interest in Frank Lyon Company's owning the new Worthen Building. We propose to purchase the building from you for $7,500,000 under a sale and lease back agreement and to borrow the money from New York Life Insurance Company on a note secured by a first mortgage on the building, a conditional assignment of your lease, and the general credit of Frank Lyon Company. The lease will require you to pay all expenses necessary to operate and maintain the building, including all repairs, all taxes, and the required insurance.

The annual rental payments will be $50,000 less than the amount of the mortgage payments for the first ten years, will be equal to our mortgage payments for the duration of the original mortgage, and will be $600,000 per year for the remainder of the lease. Worthen will have the option to purchase the building after fifteen years for $1,700,000 cash plus the assumption of the original mortgage. Worthen will also have options to re-purchase the building after twenty, twenty-five, thirty, thirty-five and forty years on a basis acceptable to Worthen Bank.

This letter merely outlines our proposal. We are flexible and want to negotiate an arrangement which is fair and equitable to both parties.

Sincerely,

FRANK LYON COMPANY
/s/ FRANK LYON
Frank Lyon
Chairman of the Board

P. Ex. 12

Comparison of Financing Plans

Sale-Leaseback $7,500,000.00 25 Years

	Frank Lyon $714,000— deferred 11 yrs.	Stephens firm $682,584— deferred 11 yrs.	Goldman Sachs tentative
Annual Lease Rentals	532,332.00 613,157.28	583,000 (11 yrs) 612,750 (12-25 yrs.)	571,430
Maturity Basic Lease	25 yrs	25 yrs	25 yrs
Percentage Mortgage Retire	100%	100%	100%
Renewal Options:			
1. 5 years	8%	4%	3%
2. 5 years	8%	4%	3%
3. 5 years	8%	4%	2.25%
4. 5 years	8%	4%	1.50%
5. 20 years	8%	4%	1.00%
Interim Cost Estimate	334,000	334,000	400,000
Fees	same	same	same
Repurchase:			
11th year		6,225,000	
15th year	6,152,903.62	5,325,000	5,400,000
20th year		3,800,000	4,725,000
25th year		2,850,000	
Total amount paid on basic rent @ 15th year	8,308,281.12	8,864,000	8,571,450
Cost of funds			
TOTAL @ 15th year:			
Basic Rent	8,308,281.12	8,864,000	8,571,450
Repurchase	6,152,903.62	5,325,000	5,400,000
	14,461,184.74	14,189,000	13,971,450

P. Ex. 13

October 31, 1967

Specification For Sale-Leaseback of Worthen Bank and Office Building

Sale will include office building and banking quarters, exclusive of building site and parking deck for $7,500,000.

The investor will submit offer based on loan to be made by New York Life Insurance Company @ 6¾% to be fully repaid in 25 years. Payments on this loan are to amortize 90% of the loan over 25 years for the first 11 years and 100% of the balance over the remaining 14 years, with payments being made quarterly in arrears. Worthen will have option to purchase at end of 11th, 15th, 20th, and 25th year.

Worthen will execute a net lease for entire building from investor and lease land to investor for the required term. Land and parking deck will be subordinated to loan of New York Life Insurance Company.

All investment tax credit and sales tax savings will accrue to Worthen Bank.

Worthen Bank reserves the right to approve any subsequent purchaser and to cancel ground lease upon its election to terminate lease after basic lease term or renewal lease term. In lieu of cancellation, adequate ground rental shall be provided for lease of land after basic lease term. Worthen's lease will be for a basic term of 25 years with 8, 5-year renewal options.

Worthen Bank will pay agreed commitment fee, attorney fees and printing costs.

Interim financing during construction is to be supplied by the First National City Bank of New York at the prime

rate of interest, such interest to be paid by Worthen Bank on amounts actually disbursed.

Investors interested in the above described sale and lease-back will supply the following information:

1. Equity to be supplied by investor $500,000 and annual rate of interest to be charged thereon 6%.
2. *Lease rental payments to be required per annum payable quarterly:*
   (a) 1 through 11 years $ 571,010
   (b) 11 through 25 years $ 601,476
3. Rate of lease payments for each 5 year renewal option. Dollar amount $300,000.
4. *Lease rental payments to be paid on land to Worthen Bank during each renewal 5 year term:*

   25 through 30 years $100,000
   30 through 35 years $150,000
   35 through 40 years $200,000
   40 through 45 years $250,000
   45 through 50 years $250,000
   50 through 55 years $250,000
   55 through 60 years $250,000
   60 through 65 years $250,000

5. *Options of Worthen Bank to repurchase subject to assumption of mortgage loan by Worthen:*

   11th year $822,362 (949,150—126,788)
   15th year $1,000,000 (1,198,280—198,280)
   20th year $1,603,568
   25th year $2,145,935

6. *Repurchase at 15th year—Summary:*

(a) Total rental payments at end 15th year	$ 8,687,014
(b) Total of equity and accrued interest at end 15th yr	$ 1,198,280
(c) Add any premium or deduct any discount ±	$ –198,280
(d) Total cost of sale leaseback including balance due on mortgage*.	$14,038,230

*Mortgage balance end of 15th year $4,351,216

These figures may not be entirely accurate since tables used were carried to only two places; minor differences will therefore obtain.

P. Ex. 14

FRANK LYON COMPANY

November 1, 1967

Mr. Ed Penick, President
Worthen Bank & Trust Company
401 Main Street
Little Rock, Arkansas 72201

Dear Ed:

We have reviewed your proposal submitted to us yesterday. Unequivocably, we would like to accept it.

However, we do not feel that this proposal is the best for Worthen Bank, therefore, we accept your proposal with one major change. Your lease payments for the first five years will be reduced by $21,000 annually. On the enclosed sheet we have listed the points contained in your specification for easy comparison of our amended proposal with your proposal.

Ed, as you know already, we want very much to be of service to Worthen Bank.

Yours truly,

FRANK LYON COMPANY
/s/ FRANK LYON
Frank Lyon
Chairman of the Board

SPECIFICATION FOR SALE-LEASEBACK OF WORTHEN BANK AND OFFICE BUILDING

1. Equity to be supplied by investor $500,000 and annual rate of interest to be charged thereon 6%.
2. *Lease rental payments to be required per annum payable quarterly:*

(a) 1 through 5 years	$550,000
(b) 6 through 11 years	$570,000
(c) 12 through 15 years	$600,000
(d) 16 through 25 years	$601,500

3. Rate of lease payments for each 5 year renewal option. Dollar amount $300,000.
4. *Lease rental payments to be paid on land to Worthen Bank during each renewal 5 year term:*

25 through 30 years	$100,000
30 through 35 years	$150,000
35 through 40 years	$200,000
40 through 45 years	$250,000
45 through 50 years	$250,000
50 through 55 years	$250,000
55 through 60 years	$250,000
60 through 65 years	$250,000

5. *Options of Worthen Bank to repurchase subject to assumption of mortgage loan by Worthen:*

11th year	$800,000	(949,150—149,150)
15th year	$1,000,000	(1,198,280—198,280)

20th year $1,603,568

25th year $2,145,935

6. *Repurchase at 11th year—Summary:*

(a) Total rental payments at end 11th year	$ 6,170,000
(b) Total of equity and accrued interest at end 11th year	949,150
(c) Add any premium or deduct any (discount)	(149,150)
(d) Balance of mortgage assumed	5,419,774
(e) Total cost of sale-leaseback	$12,389,774

P. Ex. 15

COMPARISON OF FINANCE PLANS

11/12/67

	Lyons(2)	*Ours*	*Lyons*(1)	*Stephens*
Lease Rentals:				
5 years	550,000	571,010	532,332	583,000
6 years	570,000	571,010	532,332	583,000
4 years	600,000	601,476	613,157	612,750
10 years	601,500	601,476	613,157	612,750
Investor Equity	500,000	500,000	860,000	360,000
Rate	6%	6%	6¾%	6%
Maturity Basic Lease	25 yrs.	25 yrs.	25 yrs.	25 yrs.
Renewal Options (40 years)	4%	4%	8%	4%
Land Rental to Worthen after 25 years:				
25 - 30 yrs.	100,000	100,000	0	0
30 - 35 yrs.	150,000	150,000	0	0
35 - 40 yrs.	200,000	200,000	0	0
40 - 65 yrs.	250,000	250,000	0	0
Fees	Same	Same	Same	Same
Interim Finance Cost:	334,000	334,000	334,000	334,000
Repurchase Options:				
11th year	800,000	822,362	—	707,724
15th year	1,000,000	1,000,000	1,700,000	898,725
20th year	1,603,568	1,603,568	—	1,219,930
25th year	2,145,935	2,145,935	—	2,850,000
Total @ 15th year:				
Basic Rent	8,570,000	8,687,014	8,308,281	8,864,000
Repurchase	5,351,216	5,351,216	6,152,903	5,325,000
Cost of Funds	$13,921,216	$14,038,230	$14,461,184	$14,189,000

P. Ex. 16

FIRST NATIONAL CITY BANK

Alan W. Peters
Vice President

November 30, 1967

Mr. Edward M. Penick
President
Worthen Bank and Trust Company
P.O. Box 1681
Little Rock, Ark. 72203

Dear Ed:

It is a pleasure to confirm the understanding worked out over the past few weeks regarding construction financing for your new building. We stand ready to lend up to $7,000,000 at our best commercial rate (fluctuating) to a mutually acceptable real estate corporation. We understand that there is a firm New York Life commitment for this amount and that Worthen Bank will guarantee completion of the building and minimum rentals required by the takeout.

Since Worthen Bank will not actually be guaranteeing our loan, we feel it reasonable to have some protection in the unlikely event that the New York Life loan does not become operative. May we suggest the best way to cover this eventuality is for Worthen to provide FNCB with a guarantee of rentals adequate to amortize the construction loan on a 20-year level payment schedule at 1½% above our then existing Best Rate.

With a real estate company as the actual borrower, we trust you agree with our feeling that this financing should be structured in the standard construction loan pattern. I suggest that our Mortgage & Real Estate Department people contact Dick Gates or one of your other officers to

work out mechanics of the many details such as review of the takeout, handling of the mortgage, certification of the draws, and so forth.

I trust that the arrangements outlined above are completely agreeable to everyone at Worthen Bank. If so, let's move forward as quickly as possible to put the details in order. We are anxious to cooperate and certainly do not want the first draw to be delayed by any technical problem.

Best regards,

Sincerely,

Al

P. Ex. 17

NEW YORK LIFE INSURANCE COMPANY

Richard W. Baker, Jr., Vice President
in Charge of Real Estate and Mortgage Loans

December 18, 1967

Frank Lyon Company
P.O. Box 4408
Little Rock, Arkansas

Gentlemen:

You have advised us as follows with respect to the Worthen Building, which is being constructed in Little Rock, Arkansas, and with respect to the financing program for this property:

(1) Worthen Bank and Trust Company (the "Bank") owns a parcel of land (the "Land") located at 200 West Central Capitol Avenue, Little Rock, Arkansas, and having an area of approximately 61,720 square feet, upon which the Bank is constructing the Worthen Building and a separate parking facility (the "Parking Facility") to provide parking for about 387 automobiles. The Worthen Building will be a 24-story and single basement, centrally air-conditioned, steel, concrete and masonry bank and office building, with 6 elevators and about 217,860 square feet of net rentable space. It is expected that construction will be completed by July, 1969.

(2) The Bank's estimated costs total $10,304,000, being $964,198 for acquisition of the site of the Worthen Building, $460,802 for acquisition of the site of the Parking Facility, $6,463,000 for construction of the Worthen Building, $1,015,000 for construction of the Parking Facility, $857,000 for consultant's and architect's fees and financing charges and $544,000 for fixtures and equipment.

(3) Upon the completion of construction, the Bank, as lessor, and a wholly-owned real estate subsidiary (the "Company") of Frank Lyon Company, as lessee, will enter into a lease (the "Ground Lease") of the land underlying the Worthen Building for an initial term of 25 years at a nominal ground rent, with renewals for an additional 40 years. At the same time, the Company will purchase the Worthen Building and possibly certain fixtures and equipment (the "Personal Property") from the Bank for $7,640,000, which amount will not exceed those costs to the Bank of construction of the Worthen Building and of the Personal Property which are properly capitalizable in accordance with sound accounting practice, as such costs shall have been verified by us and to our satisfaction.

(4) The purchase of the Worthen Building and the Personal Property by the Company is to be financed by a corporate loan in the principal amount of $7,140,000 to be made to the Company at the time of such purchase, which loan will be evidenced by the 6¾% secured note (the "Note") of the Company secured by an assignment to us of a lease (the "Sublease") of the Worthen Building, the lessee's interest in the Ground Lease and the Personal Property between the Company, as landlord, and the Bank, as tenant. The Note is to be additionally secured by a deed of trust (the "Deed of Trust") constituting a first lien on the Land, the Worthen Building, the Parking Facility and the leasehold estate created by the Ground Lease and a chattel mortgage or other effective first lien on the Personal Property. The Deed of Trust will include, among other provisions, provisions requiring continuance of the corporate existence of the Company until full payment of the Note.

(5) The Note will be fully repaid over the period of 25 years by constant quarterly payments of $145,581.03 during the first 11 years of such period and of $153,289.32

during the remaining 14 years of such period, all such payments to be applied first to interest at the rate of 6¾% per annum and the balance to principal.

(6) The Sublease shall be an absolutely net lease, shall permit no abatement or reduction of rent except upon conditions acceptable to us and shall be non-cancellable except upon such conditions as shall assure payment of the Note in full. If, and to the extent that, we so elect, the Deed of Trust shall be subordinate to the Sublease. The fixed expiration date of the Sublease shall in no event be earlier than the final maturity date of the Note. The Sublease shall provide for the payment of net rent in quarterly installments in amounts at least equal to the amounts of the quarterly payments required to be made by the Company pursuant to the terms of the Note, as above provided.

(7) The value of the Land, as determined by our appraisers, shall not be less than $1,425,000. Those costs to the Bank of acquisition of the Land and of construction of the Worthen Building and the Parking Facility (including consultant's and architect's fees and financing charges) which are properly capitalizable in accordance with sound accounting practice, as such costs shall have been verified to our satisfaction by a firm of independent certified public accountants satisfactory to us, shall be not less than $9,500,000.

(8) All costs and expenses in connection with the proposed transaction, including, without limitation, the cost of title insurance, survey charges, the fees and disbursements of our special counsel, recording fees, documentary stamp and other taxes and printing expenses will be paid by you or the Company.

We are pleased to advise you that, on the basis of the foregoing, and subject to our approval of the plans and specifications of the Worthen Building and the Parking

Facility, the title to the properties (including any easements affecting the Land), all proceedings to be taken in connection with the loan herein contemplated and the form and substance of all documents incident thereto, including, without limitation, the Note, the Deed of Trust, the Ground Lease, the Sublease and the instrument assigning to us all of the lessor's interest in the Sublease, and subject further to the several matters referred to or set forth in this letter or in the Summary of Certain Principal Terms and Conditions (the "Summary") attached hereto as Exhibit A, we will agree that, upon the performance of all of the terms and conditions referred to or set forth in this letter or in the Summary, we will purchase the Note in the principal amount of $7,140,000.

It is understood that our agreement to purchase the Note will be contained in a separate Note Agreement between the Company and us, setting forth all of the terms and conditions of the loan and in form and substance satisfactory to the Company and to us (and including, as exhibits thereto, the forms of the Ground Lease, the Sublease, the Deed of Trust and other appropriate documents), and that the Note Agreement will be entered into as soon as practicable.

We shall expect you to pay or reimburse us for, and by your confirmation of this letter you agree to reimburse us for, the fees and disbursements of our special counsel and all other out-of-pocket expenses which may be paid or incurred by us in connection with the proposed loan even if, for any reason whatsoever, the Note Agreement is not executed or, if executed, the transaction is not consummated.

By your confirmation of this letter, you further agree to indemnify and hold us harmless against any claim for brokerage commission or other such compensation which may be made against us by any person, firm or corpora-

tion in connection with the transaction contemplated herein.

If the foregoing is satisfactory to you, please so confirm by signing the enclosed copy of this letter and returning it to me within 15 days of the date of this letter.

Very truly yours,

NEW YORK LIFE INSURANCE COMPANY
By /s/ RICHARD W. BAKER, JR.
Vice President in Charge
of Real Estate and Mortgage Loans

Confirmed as of the date first above written.

FRANK LYON COMPANY
By /s/ FRANK LYON
President

EXHIBIT A

6¾% Secured Note
of
Wholly-Owned Subsidiary of
FRANK LYON COMPANY

SUMMARY OF CERTAIN PRINCIPAL TERMS AND CONDITIONS

Issuer: Wholly-owned subsidiary of Frank Lyon Company.

Amount of Note: $7,140,000.

Rate: 6¾%.

Maturity: 25 years from date of Note.

Date of Closing: August, 1969.

Mandatory Payments: Constant quarterly payments of $145,581.03 during the first 11 years and of $153,289.32 during the remaining 14 years prior to maturity, all such payments to be applied first to interest at the rate of 6¾% per annum and the balance to principal.

Optional Prepayments: No privilege to prepay prior to the end of the 11th loan year. Privilege to prepay the Note in full at the end of the 11th loan year and thereafter at a premium starting at 3½% at the end of the 11th loan year and decreasing ¼ of 1% per year to the end of the 21st loan year and at a premium of 1% thereafter.

Security: First deed of trust on the fee title of the Bank to the Land and the Parking Facility, on the fee title of the Company to the Worthen Building and on the leasehold estate of the Company under the Ground Lease and first chattel mortgage or other effective first lien on the Personal Property, subject only to the Ground Lease, the Sublease, the assignment of all of

the lessor's right, title and interest in the Sublease and such other matters as New York Life may approve.

Title Evidence: Title insurance to be furnished with respect to liens on real property in the amount of $7,140,000 by title insurance companies, and pursuant to policies, in form, substance and amount, satisfactory to New York Life. Attorney's opinion to be furnished with respect to lien on fixtures and equipment by counsel, and pursuant to opinion in form and substance, satisfactory to New York Life.

Sublease: The lessee's interest under the Ground Lease and all real property, fixtures and equipment acquired by the Company to be leased by the Company to the Bank. The Sublease to be an absolutely net, noncancellable lease for a term of at least 25 years from the date of the Note and to provide for net rent payable in quarterly installments at least equal to the amounts of the quarterly mandatory payments required by the Note. The Sublease to provide for furnishing of financial, operating and other statements by the Bank.

Assignment of Sublease: The Company's unencumbered right, title and interest in the Sublease to be assigned to New York Life to secure payment of the Note.

Insurance: The Bank to maintain public liability, fire and extended coverage and boiler insurance and war damage insurance when a state of war or public emergency exists and, as required by New York Life, other insurance when customarily carried by prudent owners of comparable properties.

Deed of Trust Provisions: Deed of Trust to include, among other provisions, provisions satisfactory to New York Life relative to compliance with the terms of the Ground Lease and the Sublease, continuance of the corporate existence of the Company until full payment of the Note and furnishing of financial and other

statements, and prohibiting the Company from engaging in any business other than owning, holding, leasing, maintaining and operating real property and fixtures and equipment incident thereto and from transferring the security except to an assuming domestic corporation.

Escrow: If, on the date of closing, more than 15% of the net rentable space in the Worthen Building is unfinished for occupancy, $5.00 per square foot of such unfinished space will be deposited by the Company in escrow upon terms and conditions satisfactory to New York Life until no more than 15% of such space remains unfinished.

Expenses: All expenses incident to the transaction, including, without limitation, title insurance and survey charges, fees and disbursements of New York Life's special counsel, recording fees, documentary stamp and other taxes and printing expenses are to be paid by you.

Note Agreement: Agreement to be entered into between the Company and New York Life with respect to the issuance and purchase of the Note as soon as practicable containing representations and warranties and other provisions satisfactory to New York Life including, among other provisions, provisions satisfactory to New York Life relative to closing conditions and indemnification with respect to brokerage and other commissions, if any.

P. Ex. 18

Exhibit D

WORTHEN BANK & TRUST COMPANY, *Lessor*

and

FRANK LYON COMPANY, *Lessee*

Ground Lease

Dated as of May 1, 1968

GROUND LEASE

This Lease is dated as of May 1, 1968, between Worthen Bank & Trust Company (the "Bank"), an Arkansas banking corporation with its principal office and place of business at Fourth and Main Streets, Little Rock, Arkansas, and Frank Lyon Company (the "Company"), an Arkansas corporation with its principal office and place of business at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas.

1. *Leased Property.* Upon and subject to the conditions and limitations set forth herein, the Bank leases to the Company, and the Company rents from the Bank, the real property (called "Tract A") described in Schedule 1 hereto.

2. *Term of Lease.* Subject to the further provisions hereof, this lease shall remain in full force and effect for a term commencing on May 1, 1968, and expiring at mid-

night on November 30, 2044*, unless the lease shall sooner terminate as provided in Paragraph 9 hereof.

3. *Rent.* The Company will pay to the Bank rent as follows:

(a) For the entire period commencing May 1, 1968, and ending November 30, 1994, the rent shall be the sum of $50.00, payable upon the execution of this Ground Lease, receipt of which is hereby acknowledged.

(b) For the period commencing December 1, 1994, and ending November 30, 1999, an annual rent of $100,000 per year and one-fourth thereof shall be paid on the last day of each February, May, August and November during each year of such period.

(c) For the period commencing December 1, 1999, and ending November 30, 2004, an annual rent of $150,000 per year and one-fourth thereof shall be paid on the last day of each February, May, August and November during each year of such period.

(d) For the period commencing December 1, 2004, and ending November 30, 2009, an annual rent of $200,000 per year and one-fourth thereof shall be paid on the last day of each February, May, August and November during each year of such period.

(e) For the period commencing December 1, 2009, and ending November 30, 2014, an annual rent of $250,000 per year and one-fourth thereof shall be paid on the last day of each February, May, August and November during each year of such period.

(f) For the period commencing December 1, 2014, and ending November 30, 2034, an annual rent of

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* All dates contained herein, other than May 1, 1968, shall be changed accordingly if the closing date in the Note Purchase Agreement shall be other than December 1, 1969.

$250,000 per year and one-fourth thereof shall be paid on the last day of each February, May, August and November during each year of such period.

(g) For the period commencing December 1, 2034, and ending November 30, 2044, an annual rent of $10,000 per year and one-fourth thereof shall be paid on the last day of each February, May, August and November during each year of such period.

4. *No Claims Against the Bank.* Nothing contained in this Ground Lease be construed as giving the Company any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Bank in respect thereof.

5. *Indemnification by the Bank.* During the term of the Building Lease dated as of May 1, 1968, between the Bank and the Company, the Bank will protect, indemnify and save harmless the Company from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorney's fees) imposed upon or incurred by or asserted against the Company in connection with this Ground Lease. If any action, suit or proceeding is brought against the Company by reason of any occurrence on or about Tract A during the term of said Building Lease, the Bank will at its expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Bank.

6. *Payment of Taxes.* The Bank (a) shall pay all taxes, assessments, water or sewer charges, license fee, inspection fees, and other governmental charges with respect to Tract A, and (b) shall have the right to contest the amount or validity of such charge if such proceedings shall operate

to prevent or stay the sale of Tract A to satisfy such charge.

7. *Insurance.* Any insurance with respect to Tract A shall be procured, maintained, and paid for by the Bank.

8. *Condemnation of Property.* In case of a taking of all or part of Tract A as a result of the exercise of the power of eminent domain, or the commencement of any proceedings or negotiations which might result in any such taking, the Company shall promptly give written notice thereof to the Bank, generally describing the nature and extent of such taking or the nature of such proceedings or negotiations and the nature and extent of the taking might result therefrom, as the case may be. In the absence of any judicial determination or allocation of values as between Tract A and the improvements thereon, any payment or award received by the Bank or by the Company shall be held in trust by the recipient pending a determination of the respective interests of the Bank and the Company therein. The Company irrevocably authorizes and empowers the Bank, in its name or otherwise, to file and prosecute what would be the Company's claim for any such award or payment and to collect, give a receipt for, and retain the same as herein provided. The Bank will pay all costs, fees and expenses reasonably incurred by the Company in connection with any such taking and seeking and obtaining any award or payment on account thereof.

9. *Termination.* This Ground Lease shall terminate (a) upon termination of the Building Lease dated as of May 1, 1968, between the Bank and the Company pursuant to Articles XVIII or XX thereof, or (b) upon the purchase by the Bank of the improvements on Tract A pursuant to Articles XVII or XVIII or said Building Lease.

10. *Mortgage or Assignment to Leasehold Mortgagee.* The Company shall have the authority, without the consent

or approval of the Bank, to mortgage is leasehold interest and to assign this Ground Lease and the leasehold estate created thereby (including, but not limited to, an assignment in lieu of a foreclosure) to a Leasehold Mortgagee. As used herein, the term "Leasehold Mortgagee" shall mean each person, firm, corporation, or other entity to which any part of the Company's leasehold under this lease or any other rights (beneficial or otherwise) of the Company under this lease shall at the time have been conveyed, conditionally or otherwise, by the Company under a mortgage or deed of trust. This Lease shall not be modified, altered, amended or terminated without the written consent of any such Leasehold Mortgagee.

11. *Default and Termination.* Commencing December 1, 1994, if the Company shall fail to pay any rent to the Bank when the same shall have become due and payable, and such failure shall continue for more than (30) days after receipt of written notice from the Bank, then the Bank at any time thereafter may at its option give a written termination notice to the Company, and upon the date specified in such notice the term of this lease shall expire and terminate, and all rights of the Company under this lease shall cease, subject to the following limitations:

(a) When giving notice to the Company with respect to any default under the provisions of this lease, the Bank shall also serve a copy of such notice upon any Leasehold Mortgagee by first class registered or certified mail, and no such notice to the Company shall be effective unless a copy of such notice is so served upon the Leasehold Mortgagee.

(b) If the Company shall fail to cure the default in the time prescribed herein, further notice to that effect shall likewise be given to the Leasehold Mortgagee by first class registered or certified mail.

(c) The Leasehold Mortgagee shall be allowed such additional time as may be required within which either to cure the default or to institute and complete foreclosure proceedings, or otherwise acquire title to the leasehold interest, and, so long as the Leasehold Mortgagee shall be engaged either in curing the default or in proceeding to foreclose the mortgage or deed of trust, no such default shall operate or permit the Bank to terminate the lease.

(d) If this lease should be terminated as provided herein, the Leasehold Mortgagee shall be entitled to receive a new lease for the remainder of the term upon the same terms and conditions as herein contained and having the same relative priority as the original lease if (i) the Leasehold Mortgagee agrees to take prompt steps to cure all defaults of the Company, (ii) the Leasehold Mortgagee makes a written request upon the Bank for such new lease within thirty (30) days from the date of termination of this lease, and (iii) such written request is accompanied by payment to the Bank of all amounts then due to the Bank.

(e) The Leasehold Mortgagee shall be granted the right to cure any default on the part of the Company and the further right to enter upon the premises and do all things necessary to that end.

12. *Liability of Leasehold Mortgagee.* The Leasehold Mortgagee shall not become personally liable for the obligations of this lease unless and until it becomes the owner of the leasehold estate by foreclosure, assignment in lieu of foreclosure or otherwise, and thereafter shall remain liable for such obligations only so long as the Leasehold Mortgagee remains the owner of the leasehold estate. If the Leasehold Mortgagee should become the owner of the leasehold estate, it may assign the lease without the Bank's consent, and any purchase money mortgage delivered in

connection with any such assignment shall be entitled to the benefit of all of the provisions of this lease with respect to the mortgage or deed of trust of the leasehold estate.

13. *No Waiver.* No failure by the Bank to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this lease, which shall continue in full force and effect, or the rights of the Bank with respect to any other then existing or subsequent breach.

14. *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed to have been given when mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Bank, to Worthen Bank & Trust Company, at Fourth and Main Streets, Little Rock, Arkansas, or at such other address as the Bank shall have furnished to the Company in writing, or (b) if to the Company, at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas, to the attention of Mr. Ralph Cotham, or at such other address as the Company shall have furnished to the Bank in writing, or (c) if to any Leasehold Mortgagee, at such address as such Leasehold Mortgagee shall have furnished in writing to the Bank and the Company.

15. *No Merger of Title.* There shall be no merger of this lease or of the leasehold estate created by this lease with the fee estate in Tract A or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (a) this lease or the leasehold estate created by this lease or any interest in this lease or in any such leasehold estate

and (b) the fee estate in Tract A or in any part thereof or any interest in such fee estate. No such merger shall occur unless and until all persons, corporations, firms and other entities, including each Leasehold Mortgagee, having any interest in (i) this lease or the leasehold estate created by this lease and (ii) the fee estate in Tract A or any part thereof shall join in any written instrument effecting such merger and shall duly record the same.

16. *General.* Neither this lease nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. All terms and provisions of this lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. The paragraph headings in this lease are for purposes of reference only and shall not limit or define the meaning hereof. This lease may be executed in several counterparts, each of which is an original, but all of which shall constitute one instrument.

In Witness Whereof, the parties hereto have caused this lease to be executed and their respective corporate seals to be hereunto affixed and attested by their respective officers thereunto duly authorized.

Attest:
/s/ Booker Worthen
Secretary

Worthen Bank & Trust Company
By /s/ Edward M. Penick
President

Attest:
/s/ M. R. Godwin
Secretary

Frank Lyon Company
By /s/ C. W. Adams

(Acknowledgements Omitted in Printing)

SCHEDULE 1 OF GROUND LEASE

The land (Tract A) referred to in Paragraph 1 of the Ground Lease, dated as of May 1, 1968, between Worthen Bank & Trust Company, Lessor and Frank Lyon Company, Lessee, to which this Schedule 1 is attached, consists of a parcel in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

BEGINNING at the Southwest corner of Lot 6, Block 84, Original City of Little Rock; thence northerly 160.33 feet along the West side of Lots 6, 5, 4 and 3 to a point 139.67 feet South of the Northwest corner of said Block 84; thence easterly 140.0 feet to a point on the East side of Lot 3, located 139.67 feet South of the Northeast corner of Lot 1; thence 43.88 feet in a southerly direction along the East side of Lots 3 and 4; thence easterly 160.0 feet to a point on the East side of Lot 9, located 116.45 feet North of the Southeast corner of Lot 7; thence southerly 116.45 feet along the East side of Lots 9, 8 and 7 to the Southeast corner of Lot 7; thence westerly 300.0 feet along the South side of Lots 7 and 6 to the point of beginning,

SUBJECT, HOWEVER, to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of City of Little Rock, Arkansas, to Worthen Bank & Trust Company.

LESS AND EXCEPT

(a) the air space above the North 29.33 feet of Tract A beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied

by the elevator shaft and stair well on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

FURTHER SUBJECT to liens for unpaid taxes and assessments and to unfiled mechanics' and materialmens' liens.

P. Ex. 19

Exhibit E

FRANK LYON COMPANY, *Lessor*

AND

WORTHEN BANK & TRUST COMPANY, *Lessee*

Building Lease

Dated as of May 1, 1968

(Table of Contents Omitted in Printing)

BUILDING LEASE

LEASE, dated as of May 1, 1968, between Frank Lyon Company (Lessor''), an Arkansas corporation having its principal office and place of business at West 65th Street and Scott Hamilton Drive,, Little Rock, Arkansas, and Worthen Bank & Trust Company (''Lessee''), an Arkansas banking corporation having its principal office and place of business at Fourth and Main Streets, Little Rock, Arkansas.

ARTICLE 1

LEASED PROPERTY; INITIAL TERM OF LEASE

SECTION 1.1 Upon and subject to the conditions and limitations set forth herein, Lessor leases to Lessee, and Lessee rents from Lessor, the following properties (collectively, the ''Property''):

(a) All buildings, structures and other improvements now or hereafter located on the land (Tract A'') described in Schedule 1 hereto (collectively called the ''Improvements''); and

(b) All machinery and fixtures of every kind and nature whatsoever (collectively called the ''Building Service Equipment'') which may be used or procured for use in connection with the operation and maintenance of the Improvements, including but not limited to engines, motors, generators, dynamos, pumps and similar apparatus; furnaces, boilers, incinerators, oil burners, radiators and piping; stokers, heaters, tanks and heating equipment; wiring and electrical equipment; gas, electric, lighting, heating, plumbing, and bathroom fixtures, including pipes and conduits; elevators, escalators and lifting apparatus; refrigerating, air cooling, air conditioning, ventilating and sprinkling apparatus; partitions, built-in kitchen and restaurant equipment; plants and shrubbery; and wall-to-wall carpeting and all other equipment and furnishings used or procured for use in connection with the operation and maintenance of the Improvements, together with all replacements thereof and additions thereto, but specifically excluding safety deposit boxes, vault doors, banking trade fixtures, furniture, china, glassware, silverware and similar personalty; and,

(c) All of the leasehold estates, right, title and interest of Lessor created by that certain Ground Lease between Worthen Bank & Trust Company, as landlord, and Frank Lyon Company, as tenant, dated as of May 1, 1968, recorded in the office of the Circuit Clerk and Ex-Officio, Recorder of Pulaski County, Arkansas, on———, 1968, in Book—— at page——, in and to Tract A.

SECTION 1.2. Subject to the further provisions hereof, this Lease shall remain in full force and effect for an initial term (the ''Initial Term'') commencing on May 1, 1968, and expiring at midnight on November 30, 1994,* unless this Lease shall sooner terminate as hereinafter provided,

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* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

with privilege unto Lessee, its successor and assigns, to extend the term of this Lease as provided in Section 2.1.

ARTICLE II

Extended Term of Lease

Section 2.1. If Lessee is not in default in the performance of any of its obligations hereunder, it shall have the options to extend the term hereof successively for eight (8) additional terms of five (5) years each upon the same terms as herein contained except that the Basic Rent payable during each such extended term shall be as set forth in Section 3.1 (b) and the number of extended terms permitted hereunder shall be reduced by one upon each such extension. Lease shall exercise each such option by giving written notice of such exercise to Lessor not less than twelve (12) months prior to the expiration of the term or the extended term, as the case may be, then in effect. Should Lessee fail to exercise any option to extend the term hereof, it shall have no right thereafter to exercise any succeeding option to extend the term hereof.

ARTICLE III

Basic Rent

Section 3.1. Lessee will pay to Lessor or Assignee a net basic rent ("Basic Rent") as follows:

(a) For the portion of the Initial Term of this Lease prior to December 1, 1969,* no Basic Rent shall be payable, and for the balance of the Initial Term of this Lease a Basic Rent shall be payable as follows:

(1) For the period commencing December 1, 1969,* and ending November 30, 1980,* $145,581.03

* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

on each of the forty-four (44) Quarterly Installment Dates (as defined in Section 3.3 hereof) within such period.

(2) For the period commencing December 1, 1980,* and ending November 30, 1994,* $153,289.32 on each of the fifty-six (56) Quarterly Installment Dates within such period.

(b) For each five-year extended term, a Basic Rent at an annual rate of $300,000. Such Basic Rent shall be payable in equal quarterly installments on the Quarterly Installment Dates within each such extended term.

Section 3.2. The Basic Rent and other sums payable to Lessor or Assignee hereunder shall be payable in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be paid to Lessor or Assignee at Lessor's address set forth above or to such agent or person or persons or at such other address as Lessor or Assignee from time to time may designate in writing. The Basic Rent shall be absolutely net to Lessor or Assignee so that this Lease shall yield to Lessor or Assignee the full amount of the installments of Basic Rent throughout the term of this Lease without deduction.

Section 3.3. The Quarterly Installment Dates are the last day of each February, May, August and November during the term of this Lease or any extension thereof commencing February 28, 1970.*

* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

ARTICLE IV

Additional Rent

Section 4.1. Lessee will also pay, from time to time as provided in this Lease as additional rent ("Additional Rent"), (a) all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay, (b) interest at the rate of 10% per annum on such of the foregoing amounts, liabilities and obligations as are payable to Lessor or Assignee and are not paid when due, from the due date until payment thereof, and (c) interest at the rate of 10% per annum on all overdue installments of Basic Rent, from the due date thereof until payment. In the event of any failure on the part of Lessee to pay any Additional Rent, Lessor or Assignee shall have all the rights, powers and remedies provided for in this Lease or at law or in equity or otherwise in the case of non-payment of the Basic Rent.

ARTICLE V

No Counterclaim, Abatement, Etc.

Section 5.1. The Basic Rent, Additional Rent and all other sums payable by Lessee hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) for any reason, including, without limitation, whether occurring before or after the Completion Date: (a) any defect in the condition, quality or fitness for use of the Property or any part thereof; (b) any change of grade of any abutting street; (c) any damage to or destruction of or any Taking (for a limited period or otherwise) of the Property or any part thereof; (d) any restriction, prevention or curtailment of or interference with any of the Property or any part thereof; (e) any title defect or encumbrance or any eviction or prospective eviction from the

Property or any part thereof by title paramount or otherwise; (f) any change, waiver, extension, indulgence or other action or omission in respect of any obligation or liability of Lessor; (g) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lessor or Assignee, or any action taken with respect to this Lease by any trustee or receiver of Lessor or of Assignee, or by any court, in any such proceeding; (h) any claim which Lessee has or might have against Lessor or Assignee; (i) any failure on the part of Lessor to perform or comply with any of the terms hereof or of any other agreement with Lessee; or (j) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Lessee shall have notice of knowledge of any of the foregoing. Except as expressly provided herein, Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease or the Property or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of Basic Rent, Additional Rent or any other sum payable by Lessee hereunder. All payments by Lessee to Lessor hereunder shall be final, and Lessee will not seek to recover any such payment or any part thereof for any reason whatsoever.

ARTICLE VI

Condition and Use of Property

Section 6.1. Lessor makes no representation or warranty with respect to the present or future condition of the Property or its fitness or availability for any particular use, and neither Lessor nor Assignee shall be liable for any latent or patent defect therein. Lessee may use the Property for any lawful purpose and will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement, or which might impair the value or usefulness of the Property or any part

thereof, or which constitutes a public or private nuisance or abandonment or waste of the Property or any part thereof.

ARTICLE VII

Repairs and Maintenance of Premises

Section 7.1. Lessee convenants throughout the term of this Lease, at Lessee's sole cost and expense, to take good care of the Property and the adjoining sidewalks, curbs and vaults, and subject to the provisions of this Lease elsewhere set forth, to keep the same in good order and condition, excepting reasonable wear and tear, and promptly at Lessee's own cost and expense to make all necessary repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, and to shore the foundations and walls of the Property, and to do any other acts necessary for the preservation and safety of the Property if an excavation or other building operation shall be made upon any adjoining premises or streets. When used in this Section, the term "repairs" shall include replacements or renewals when necessary, and all such repairs made by Lessee shall be at least equal in quality and class to the original work. Lessee shall keep and maintain all portions of the Property and the adjoining sidewaks in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice.

ARTICLE VIII

Replacement and Removal of Building

Service Equipment

Section 8.1. All improvements and alterations to the Property, all replacements or renewals of Building Service Equipment, and all personal property and fixtures acquired or installed by or on behalf of Lessee pursuant to

Lessee's covenants in Section 7.1 hereof shall, immediately upon completion, acquisition or installation thereof, be and become the property of Lessor without payment therefor by Lessor and shall be surrendered to Lessor upon the expiration or earlier termination of the term of this Lease. Lessee shall be entitled to remove any of Lessee's personal property, as defined in ARTICLE XXXI hereof, during the term of this Lease, or if the term shall end prior to the date herein specifically fixed for such termination, then within a reasonable time thereafter, but Lessee shall, at its own cost and expense, repair any and all damage to the Property resulting from or caused by their removal therefrom.

ARTICLE IX

Public Utility Charges

Section 9.1. Lessee agrees to pay or cause to be paid all charges for gas, electricity, light, heat, power, water, storm and sanitary sewage, telephone and other communication service used, rendered or supplied upon or in connection with the Property throughout the term of this Lease, and to indemnify Lessor and save it harmless against any liability or damages on such account. Lessee shall also at its sole cost and expense procure any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such services to and upon the Property.

ARTICLE X

Mechanics' Liens

Section 10.1. Lessee shall not suffer or permit any mechanics' liens to be filed against the Property nor against Lessee's leasehold interest in the Property by reason of

work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Property or any part thereof through or under Lessee. If any such mechanics' lien shall at any time be filed, Lessee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, or deposit with Lessor or Assignee the amount of such lien together with all interest and penalties that may or might accrue thereon (any balance remaining after the discharge of such lien of record to be returned, without interest, to Lessee). If Lessee shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy of Lessor, Lessor, if at any time Lessor believes that the nonpayment of such lien may subject the Property or some part thereof to forfeiture or loss, may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Lessor shall be entitled, if Lessor so elects, to compel the prosecution of an action for the foreclosure of such mechanics' lien by the lienor and to pay the amount of the judgment for and in favor of the lienor with interest, costs and allowances. Any amount paid by Lessor, in excess of any amount so deposited with Lessor or Assignee, for any of the aforesaid purposes with interest thereon at the rate of ten per centum (10%) per annum from the date of payment shall be repaid by Lessee to Lessor on demand, and if unpaid may be treated as Additional Rent as provided in Section 4.1 hereof. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of

or to the Property or any part thereof, nor as giving Lessee a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' lien against the Property.

ARTICLE XI

Indemnification of Lessor

Section 11.1. Lessee agrees to indemnify and save Lessor harmless against and from any and all claims by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from the conduct or management of or from any work or thing whatsoever done in and on the Property and will further indemnify and save Lessor harmless against and from any and all claims arising during the term of this Lease from any condition of the Property or any street, curb or sidewalk adjoining the Property, or of any vaults, tunnels, passageways or space therein or appurtenant thereto, or arising from any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of Lessee to be performed, pursuant to the terms of this Lease, or arising from any act or negligence of Lessee, or any of its agents, contractors, servants, employees, or licensees or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease, in or about the Property, or upon or under the sidewalks and the land adjacent thereto, and from and against all costs, expenses and liabilities incurred in or in connection with any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor convenants to resist and defend such action or proceeding and to employ counsel therefor satisfactory to Lessor. Lessee covenants and agrees to pay, and to in-

demnify Lessor against, all legal costs and charges including counsel fees lawfully and reasonably incurred in obtaining possession of the Property after default of Lessee or after Lessee's default in surrendering possession upon expiration or earlier termination of the term of this Lease or enforcing any covenant or agreement of Lessee herein contained.

ARTICLE XII

Additional Rent, Payment of Taxes, Assessment, Etc.

Section 12.1. Lessee covenants and agrees to pay as Additional Rent (subject as hereinafter provided), before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, personal property taxes, assessments, water rates and water charges, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever (all of which taxes, assessments, water rates or water charges, and other governmental levies and charges are hereinafter referred to as "imposition" or "impositions"), which are assessed, levied, confirmed, imposed or become a lien upon the Property or any part thereof or become payable during the term of this Lease. If, by law, any such imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such imposition), Lessee may pay the same (and any accrued interest on the unpaid balance of such imposition), in installments as the same respectively become due and before any fine, penalty, interest or cost may be added thereto for the non-payment of any such installment and interest. Any imposition relating to a fiscal period of the taxing authority, a part of which period is included within the term of this Lease and a part of which is included in a period of time after the expira-

tion of this Lease shall (whether or not such imposition shall be assessed, levied, confirmed, imposed or become a lien upon the Property, or shall become payable during the term of this Lease) be adjusted between Lessor and Lessee as of the expiration of this Lease.

Section 12.2. Nothing in this Lease contained shall require Lessee to pay any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax of Lessor, or any income, profit or revenue tax or any other tax, assessment, charge or levy upon the rent payable by Lessee under this Lease, nor shall any tax, assessment, charge or levy of the character hereinabove in this Section described be deemed to be included within the term "imposition' as defined in Section 12.1. If at any time during the term of this Lease under the laws of the State of Arkansas or any political subdivision thereof a tax or excise on rents is levied or assessed against Lessor or the Basic Rent, as a substitution in whole or in part for taxes assessed or imposed by said State or any political subdivision thereof on land, buildings or personal property, the same shall be deemed to be included within the term "imposition" as defined as aforesaid, and Lessee covenants (but to the extent only that such substitution so far as ascertainable relieves Lessee from the payment of impositions as in Section 12.1 provided) to pay and discharge such tax or excise on rent in accordance with the provisions of Section 12.1 in respect of the payment of impositions. If Lessee shall be required by law to pay, and pursuant to such requirement does pay, any such tax, assessment, charge or levy in this Section described Lessor shall, upon written request, reimburse Lessee for any such payments with interest at six per centum (6%) per annum (other than payments made by Lessee pursuant to the provisions in the preceding sentence in respect of a tax or excise on rents levied or assessed as a substitution in whole or in part for taxes assessed or imposed on land, buildings or personal property).

SECTION 12.3. Within a reasonable time after a request therefor is made by Lessor, Lessee covenants to furnish to Lessor for its inspection official receipts of the appropriate taxing authority, or other proof satisfactory to Lessor, evidencing the payment of any imposition payable by Lessee as provided in this Article.

SECTION 12.4. Lessee shall have the right to contest the amount or validity of any such imposition by appropriate proceedings. Lessee shall, nevertheless, promptly pay such imposition in accordance with the terms and provisions of this Lease, and nothing herein shall imply any right on the part of Lessee to postpone or defer such payment for any such purpose, unless such proceedings shall operate to prevent or stay the collection of the imposition so contested and the sale of the Property, or any part thereof, to satisfy the same. Lessee shall set aside on its books adequate reserves with respect to such contested liability and shall furnish such security, if any, as may be required in the proceedings or reasonably requested by Lessor or Assignee, which security may include a deposit by Lessee with Lessor of a sum equal to the amount so contested and unpaid together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the property, or any part thereof, in said proceedings. Upon the termination of such proceedings, Lessee shall pay the amount of any such imposition, or part thereof, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and upon such payment, Lessor shall return the amount of any deposit above referred to without interest. If at any time during the continuance of such proceedings Lessor shall deem the amount deposited with it insufficient, Lessee shall, upon demand, deposit with Lessor such additional sum

as Lessor may reasonably request, and upon failure of Lessee so to do, the amount theretofore deposited may be applied to the payment, removal and discharge of said imposition and the interest and penalties in connection therewith and any costs, fees or other liabilities accruing in any such proceedings, and the balance, if any, shall be returned to Lessee, provided Lessee is not in default hereunder. If the amount so deposited shall be insufficient for this purpose, Lessee shall forthwith pay to Lessor such additional sum as may be necessary to pay the same. Lessor shall not be required to join in any such proceedings except that if any law hereafter in effect shall require that such proceedings be brought by or in the name of Lessor or any owner of the Property, Lessor agrees not unreasonably to withhold its consent to joining in any such proceedings, or permittting the same to be brought in its name. Lessor shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceeding, and Lessee covenants to indemnify and save harmless Lessor from any such costs or expenses. Lessee shall be entitled to any refund of any such imposition and penalties or interest thereon, which shall have been paid by Lessee, or if paid by Lessor, for which Lessor shall have been fully reimbursed.

SECTION 12.5. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of such imposition, of nonpayment of any such imposition shall be prima facie evidence that such imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

ARTICLE XIII

COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

SECTION 13.1. Lessee covenants throughout the term of this Lease, at Lessee's sole cost and expense, promptly to comply with all requirements of all laws, orders, ordi-

nances, rules and regulations of the Federal, state, county and municipal authorities, and with any direction or certificate of occupancy of any public officer or officers, and the orders, rules and regulations of the National Board of Fire Underwriters and each other body having similar functions, and with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the Property, which shall impose any duty upon the Lessee with respect to the Property or the use, occupancy or control thereof or the conduct of any business therein, whether or not any of the same require structural repairs or alterations.

SECTION 13.2. Lessee shall have the right to contest by appropriate legal proceedings, in the name of Lessee or Lessor or both, but without cost or expense to Lessor, the validity of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 13.1 and if by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith may legally be held in abeyance without the incurrence of any lien, charge or liability of any kind against the fee of the Property or Lessee's leasehold interest in said Property and without subjecting Lessee or Lessor to any liability, civil or criminal, of whatsoever nature for failure so to comply therewith, Lessee may postpone compliance therewith until the final determination of any proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch, and, if any lien, charge or civil liability is incurred by reason of non-compliance, Lessee may nevertheless make the contest aforesaid and delay compliance as aforesaid, provided that Lessee furnishes to Lessor security reasonably satisfactory to Lessor against any loss or injury by reason of such non-compliance or delay therein and prosecutes the contest aforesaid with due diligence and dispatch.

SECTION 13.3. This Lease is upon and subject to all of the terms, covenants and agreements of the Ground Lease

described in granting clause (c) of Section 1.1 hereof. Lessee covenants to keep, perform and observe all of such terms, covenants and agreements on the part of the tenant thereunder to be kept, observed and performed, including the payment of all rent and other sums payable by the tenant thereunder. Lessee shall do all things necessary to prevent any default on the part of the tenant thereunder, or any termination, surrender, cancellation, forfeiture or impairment thereof, to the end that the rights of Lessor, as tenant thereunder, may be kept unimpaired and free from default.

SECTION 14.1. Lessee shall, at Lessee's sole cost and expense, throughout the term of this Lease:

A. Keep the Property insured against loss or damage by fire and lightning and such other risks as are insurable against under the present or future standard forms of extended coverage insurance, in amounts not less than one hundred per centum (100%) of then full insurable value;

B. Keep the Property insured against war risks as and when such insurance is obtainable from the United States of America or an agency thereof, in an amount not less than one hundred per centum (100%) of then full insurable value;

C. Keep the Property insured in an amount not less than ten per centum (10%) of then full insurable value against loss or damage from leakage of sprinkler systems now or hereafter installed therein;

D. Keep the Property insured against loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, with respect to all steam boilers, pressure vessels or similar apparatus, now or hereafter installed therein, in an amount not less than $100,000 with respect to any one accident; and

E. Keep the Property insured as reasonably required by Lessor or Assignee and against all risks insured against by prudent persons owning like properties in like localities, giving due regard to the height and type of building, its construction, location, use and occupancy.

The term "full insurable value" shall mean the actual replacement cost (excluding foundation and excavation cost for the purposes of the foregoing Subsections A and C but including such foundation and excavation costs for the purposes of the foregoing Subsection B), less physical depreciation, and said "full insurable value" shall be determined from time to time at the request of Lessor (but not more frequently than once in every twelve (12) months' period) by an architect, contractor, appraiser, appraisal company or one of the insurers selected and paid by Lessee and acceptable to Lessor.

All insurance for which provision has been made in Subsection E of this Section shall be maintained in such amounts as such insurance is usually carried by prudent persons enegaged in the same or a similar business; and all insurance therein provided for shall be effected under a valid and enforceable policy or policies issued by insurers of recognized responsibility.

The policy or other contract of insurance in respect of the hazard of the character described in Subsection D of this Section may provide in effect that the first $1,000 of loss sustained shall be paid by Lessee and that additional losses sustained, which are insured against under such policy or other contract of insurance, shall be paid by the insurer.

Any such insurance may be effected by policies of blanket insurance, which may cover other property not included, as well as the Property; provided however, that either (1) any such policy of blanket insurance shall specify therein, or (2) Lessee shall furnish Lessor with a written statement from the insurers under such policy specifying the amount of the total insurance allocated to the Property (which amount shall at all times be not less than the applicable amounts required by this Article); and provided, further, that in all other respects, any such policy shall comply with the other provisions of this Article.

SECTION 14.2. Lessee shall at Lessee's sole cost and expense, throughout the term of this Lease and for the mutual benefit of Lessor and Lessee, maintain general public liability insurance against claims for bodily injury or death occurring on, in or about the Property or any elevator or escalator therein and upon, in or about the adjoining streets, sidewalks and passageways thereof, such public liability insurance to afford protection to the limit of not less than $200,000 in respect of bodily injury or death to any one person, and not less than $1,000,000 in respect to bodily injury or death to any number of persons in any one accid t or occurance.

SECTION 14.3. All proceeds of policies of insurance in respect of hazards of the character described in Section 14.1 shall be payable to Lessor or Assignee, as its interest may appear (by means of the standard mortgagee clause without contribution, if obtainable). The loss, if any, under any such policy shall be adjusted with the insurance companies (a) by Lessee in case of any particular casualty resulting in a loss payment not exceeding $50,000 in the aggregate, or (b) by Lessor and Lessee in the case of any particular casualty resulting in a loss payment exceeding $50,000 in the aggregate; provided, however, that the loss, if any, under any such policy shall be adjusted with the insurance companies by Lessor and Lessee in the case of any particular casualty resulting in a loss payment exceeding $200,000 in the aggregate only if the Assignee shall have consented to such adjustment. The loss so adjusted

shall be paid (i) to Lessee in the case of any particular casualty resulting in a loss payment not exceeding $50,000 in the aggregate, or (ii) to Lessor or to the Assignee in the case of any particular casualty resulting in a loss payment exceeding $50,000 in the aggregate. All such policies or certificates therefore issued by the respective insurers shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease.

SECTION 14.4. All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurers of recognized responsibility satisfactory to Lessor, and such policies shall name Lessor and Lessee as the assureds, as their respective interests may appear. All policies of insurance provided for in Section 14.1, shall provide (a) that such policies shall not be cancelled without at least ten (10) days' prior written notice to each assured named therein and to the Assignee to whom loss thereunder may be payable, and (b) to the extent obtainable, that any loss shall be payable to Lessor or to the Assignee, notwithstanding any act or negligence of Lessee which might otherwise result in forfeiture of said insurance.

SECTION 14.5 Promptly upon request and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies, originals of the policies provided for in Section 14.1 and certificates issued by the respective insurers of the policies provided for in Section 14.2, shall be delivered to Lessor and Assignee. Within twenty (20) days after each Quarterly Installment Date, Lessee will furnish satisfactory evidence to Lessor and Assignee that, as to all policies or contracts so delivered with respect to which the amount of premiums thereon shall have been determined and shall have become due and payable during such quarterly period, payment of all such premiums has been made. Lessee shall also furnish to Lessor and Assignee upon the execution of this Lease and thereafter at

any time upon Lessor's request, a certificate signed by an executive officer of Lessee, containing a statement of the insurance effected by Lessee pursuant to this Article and then in force and stating that the insurance then in force complies with the provisions of this Article, together with such evidence in support of such certificate as Lessor and Assignee may reasonably require. The premiums on all insurance policies in force at the termination of this Lease shall be apportioned between Lessor and Lessee in such manner that Lessor shall reimburse Lessee for that portion of the aggregate premiums unearned on all such policies in force at such termination of this lease.

ARTICLE XV

CHANGES AND ALTERATIONS BY LESSEE

SECTION 15.1. Unless an Event of Default (as defined in the Deed of Trust) shall have occurred which shall not have been remedied, Lessee shall have the right, at any time and from time to time during the term of this Lease, to make such changes and alterations, structural or otherwise, to the Property as Lessee shall deem necessary or desirable in connection with the requirements of its business, including, without limiting the foregoing, the right to connect any building with any adjoining building or buildings or part thereof. Such changes, alterations or new construction (herein collectively referred to as "changes and alterations" or "changes or alterations"), other than changes or alterations of Lessees personal property and fixtures, shall be made in all cases subject to the following conditions which Lessee covenants and agrees to observe and perform:

A. No change or alteration shall be undertaken or carried on until Lessee shall have procured and paid for, so far as the same may be required, from time to time, all municipal and other governmental permits

and authorizations of the various municipal departments and governmental subdivisions having jurisdiction which are required for the completion of such change or alteration, and Lessor agrees to join in the application for such permits or authorizations whenever such action is necessary.

B. The building or buildings as so altered or improved, upon completion of the work, shall be of a value not less than the value of such building or buildings immediately prior to the making of such alteration or improvement.

C. Any change or alteration involving an estimated cost of more than $100,000 shall be conducted under the supervision of an architect or engineer selected by Lessee, who may be in the employ of Lessee and shall be satisfactory to Lessor, and no such change or alteration shall be undertaken until twenty-five (25) days after there shall have been filed with Lessor detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such architect or engineer and accompanied by a certificate of such architect or engineer stating that such plans and specifications conform to all applicable provisions of this Article, and during such 25-day period Lessor shall not have served notice on Lessee that it is not satisfied with said architect or engineer.

D. No change or alteration involving an estimated cost of more than $250,000 shall be undertaken until either (1) Lessor shall have been furnished by Lessee, at Lessee's expense, with a bond in which Lessee shall shall be principal and a surety company of recognized responsibility shall be surety, and which, at Lessor's request, shall run in favor of the Assignee, and which shall be in form satisfactory to Lessor, conditioned upon the completion of and payment in full for such

change or alteration within a reasonable time, subject, however to Unavoidable Delays, or (2) Lessee shall have deposited with Lessor a sum sufficient to pay the entire cost of any such change or alteration as estimated by the architect or engineer referred to in Subsection C of this Section.

E. Moneys deposited with Lessor pursuant to the foregoing Subsection D may be withdrawn by Lessee, provided Lessee is not in default in the payment of the Basic Rent, or any item of Additional Rent or other charge payable by Lessee hereunder and shall be paid by Lessor as hereinafter provided, from time to time, upon receipt by the Lessor of the following:

(1) A certificate of the architect or engineer referred to in Subsection C of this Section dated dated not more than thirty (30) days prior to the application for such withdrawal setting forth in substance as follows:

(i) That the sum then requested to be withdrawn either has been paid by Lessee and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered services or furnished materials for any such change or alteration, pursuant to the plans and specifications therefor referred to in Subsection C of this Section and giving a brief description of such services and the materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said persons in respect thereof, and stating the progress of such change or alteration pursuant to said plans and specifications up to the date of said certificate, and

that, so far as they are applicable to the conduct of such change or alteration, the provisions of Subsections A and G of this Sec- have been duly and fully compiled with;

(ii) That the sum then requested to be withdrawn, plus all sums previously withdrawn on account of such change or alteration, does not exceed the total cost thereof in so far as actually accomplished up to the date of such certificate, and that in the opinion of said architect or engineer the remaining moneys so deposited with Lessor will be sufficient to pay in full for the completion of such change or alteration; and

(iii) That, except for the amounts, if any stated in said certificate, pursuant to Subclause (i) of this Clause, to be due for services or materials, there is not outstanding indebtness known, after due inquiry, to said architect or engineer, which is then due and payable for labor, wages, services, materials or supplies in connection with such change or alteration which, if unpaid, might become the basis of a vendors', mechanics', laborers', materialmen's, statutory or other similar lien upon the Property or any part thereof.

(2) An affidavit sworn to by an executive officer of Lessee not more than thirty (30) days prior to the application for such withdrawal setting forth in substance as follows:

(i) That al' materials and all property constituting the changes and alterations described in said certificate pursuant to the foregoing Clause (1) of this Subsection and every part thereof, are free and clear of all encum-

brances, except those created by Lessor and undetermined or inchoate liens or charges for indebtedness incidental to such changes and alterations and which have not at the time been filed pursuant to law, and except encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate pursuant to the foregoing Clause (1) of this Subsection, which encumbrances will be discharged upon payment of such indebtedness;

(ii) That no part of the several amounts paid and/or due, as stated in said certificate pursuant to the foregoing Clause (1) of this Subsection, has been or is being made the basis of the withdrawal of any money so deposited with Lessor in any previous or then pending application, or has been paid out of the proceeds of insurance received by Lessee as provided in Section 14.3 hereof;

(iii) That the provisions of Subsection G of this Section have been duly and fully complied with; and

(3) An official search or other evidence satisfactory to Lessor showing that there has not been filed with respect to the Property any mechanics' of other lien which has not been discharged of record, except such as will be discharged upon payment of the amount then requested.

Upon compliance with the foregoing provisions of this Subsection E, Lessor shall, on Lessee's request, pay to the persons named in said certificate pursuant to Clause (1) (i) of this Subsection the respective amounts stated in said certificate to be due to them

and/or pay to Lessee the amount stated in said certificate to have been paid by Lessee. Lessee agrees to file a notice of completion of such changes and alterations promptly, and not less than one hundred twenty (120) days nor more than one hundred thirty (130) days after the filing of such notice Lessee shall furnish to Lessor an official search or other evidence satisfactory to Lessor showing that there has not been filed with respect to the Property any mechanics' or other lien which has not been discharged of record.

In the event that any change or alteration made under this Article shall be made in conjunction with the restoration, repair or replacement required to be made by Lessee under Article XVII or Article XVIII, the amount of the bond to be furnished or the deposit to be made under Subsection D of this Section need not exceed the aggregate cost of the work under both this Article and Article XVII or Article XVIII, as the case may be (as estimated by the architect or engineer referred to in Subsection C of this Section), less the proceeds of any insurance or proceeds of a condemnation award received by Lessor or the Assignee and which are applicable to work to be done by Lessee under Article XVII or Article XVIII, as the case may be. Any moneys deposited pursuant to Subsection D shall not be used or disbursed until such proceeds of any insurance or proceeds of a condemnation award shall have been fully withdrawn and paid over in the manner and to the extent provided in Article XVII or Article XVIII for such alteration, restoration, repair or replacement.

F. At any time after the completion in full, pursuant to the plans and specifications therefor previously submitted under Subsection C of this Section, of any change or alteration in respect whereof such moneys were deposited, the whole balance of moneys

so deposited with Lessor and then remaining on deposit may be withdrawn by Lessee, provided Lessee is not in default in the payment of the Basic Rent or any item of Additional Rent or other charge payable by Lessee hereunder, and shall be paid to Lessee upon receipt by Lessor of a certificate of the architect or engineer referred to in Subsection C of this Section dated not more than five (5) days prior to the application for such withdrawal setting forth in substance as follows:

(1) That such change or alteration in respect of which such moneys were deposited has been completed in full pursuant to the plans and specifications therefor previously filed with Lessor under Subsection C of this Section;

(2) That all amounts which Lessee is or may be entitled to withdraw under Subsection E of this Section on account of services rendered or materials furnished in connection with such change or alteration have been withdrawn under said Subsection E; and

(3) That all amounts for whose payment Lessee is or may become liable in respect of such change or alteration have been paid in full.

G. All work done in connection with any change or alteration shall be done promptly and in good and workmanlike manner and in compliance with the building and zoning laws of the municipality or other governmental subdivision wherein the Property is situated and with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and in accordance with the orders, rules and regulations of the National Board of Fire Underwriters or any other body

now or hereafter constituted exercising similar functions; the cost of any such change or alteration shall be paid in cash or its equivalent, so that the Property shall at all times be free of liens for labor and materials supplied or claimed to have been supplied; and the work of any change or alteration shall be prosecuted with reasonable dispatch, Unavoidable Delays excepted. Workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Property, and general liability insurance for the mutual benefit of Lessee and Lessor, expressly covering the additional hazards due to any change or alteration, with limits of not less than $200,000 in the event of bodily injury or death to one person and not less than $1,000,000 in the event of bodily injury or death to any number of persons in any one accident, and with limits of not less than $50,000 for property damage, shall be maintained by Lessee at Lessee's sole cost and expense at all times when any work is in process in connection with any change or alteration. The general liability insurance provided for in this Subsection shall be in addition to the insurance required to be maintained by Lessee pursuant to Section 14.2 and may be effected by an appropriate endorsement, if obtainable, upon the insurance referred to in Section 14.2. All such insurance shall be in a company or companies of recognized responsibility, and all such policies or certificates therefor issued by the respective insurers shall be delivered to Lessor endorsed "Premium Paid" by the company or agency issuing the same or with other evidence of payment of the premiums satisfactory to Lessor.

SECTION 15.2. Lessee covenants and agrees that in performing any work or repairs to or restoration of the Property, required to be performed by Lessee pursuant to to the provisions of Article VII, Article XIII, Article XVII or Article XVIII, it will also observe and perform the conditions relating to changes and alterations set forth in Subsections A, B, C, and G of Section 15.1 to the extent that the nature and estimated cost of such repairs or restoration, if the same were changes or alterations made under this Article, would make such observance and performance applicable.

ARTICLE XVI

EXCAVATIONS ON ADJOINING PROPERTY AND VAULT SPACE

SECTION 16.1. If an excavation or other building operation shall be about to be made or shall be made upon any adjoining premises or streets, Lessee shall permit Lessor or Lessor's agents, or the owner or lessee of such adjoining premises, and their respective representatives, to enter the Property and to shore the foundations and walls of any building thereon, and to do any other act or thing necessary for the safety and preservation of the Property, and Lessor shall not be liable for any inconvenience, annoyance, disturbance, loss of business or other damage arising therefrom, and Lessee's obligation hereunder shall not thereby be affected. Lessor agrees in connection with any work done by Lessor pursuant to the provisions of this Article to cause as little inconvenience, annoyance and disturbance to Lessee as possible, consistent with the nature of the work involved. Nothing in this Article contained shall imply or be deemed to create any obligation upon Lessor to shore foundations or walls or to do any other act or thing necessary for the safety and preservation of the Property.

SECTION 16.2. All vaults, canopies, marquees or other structures now or hereafter built projecting beyond the building line of the Property are not included within the premises demised by this Lease, but Lessor covenants that

Lessee may occupy and use the same during the term of this Lease, subject only to such laws, rules and regulations as may be imposed by the appropriate municipal departments with respect thereto. No revocation on the part of any municipal department or authority of the license to maintain and use such vaults, canopies, marquees or other structures shall in any way affect this Lease or the amount of the Basic Rent or any item of Additional Rent or other charges payable by Lessee hereunder. If any such license so to maintain and use such vaults, canopies, marquees or other structures shall be revoked, Lessee will, at its sole cost and expense, do and perform all such work as may be necessary to comply with any order revoking the same. Lessor agrees to cooperate with Lessee in obtaining and renewing such license or licenses.

ARTICLE XVII

Damage or Destruction

Section 17.1. Lessee covenants and agrees that in case of damage to or destruction of the Property (except for Total Destruction as defined in Section 17.6 below) by fire or otherwise, it will promptly, at its sole cost and expense, restore, repair or replace the same as nearly as possible to the condition immediately prior to such damage or destruction or with such changes or alterations as Lessee may be permitted to make in conformity with Article XV. Such restoration, repairs, replacements, changes or alterations shall be commenced promptly and prosecuted to completion with all due diligence and in no event later than two years from the time of such damage or destruction, Unavoidable Delays excepted.

Section 17.2 Except as provided in Section 17.6, all insurance money recovered by Lessor or Assignee on account of such damage or destruction less the cost, if any, to Lessor or Assignee of such recovery, may be withdrawn by Lessee and shall be paid by Lessor or Assignee, as the

case may be, either to reimburse Lessee for expenditures made to repair, restore or replace the Property so damaged or destroyed (including expenditures made for temporary repairs or for the protection of the Property pending the completion of permanent repairs, restorations or replacements, or to prevent interference with the business operated thereon, and repairs, restorations and replacements then in process in so far as actually made or constructed) or to pay contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for such repairs, restorations or replacements (hereinafter referred to as "Restoration" or as the "work"), and shall be paid out as hereinafter provided from time to time as such work progresses upon the written request of Lessee, which shall be accompanied by

A. A certificate of an architect or engineer in charge of the work (who shall be selected by Lessee, who may be in the employ of Lessee and who shall be satisfactory to Lessor and Assignee) dated not more than thirty (30) days prior to such request, setting forth in substance as follows:

(1) That the sum then requested to be withdrawn either has been paid by Lessee, and/or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered services or furnished materials for certain work, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid and/or due to each of said persons in respect thereof, and stating the fair value of such work at the date of the acquisition thereof; and

(2) That, except for the amounts, if any, stated in said certificate pursuant to the foregoing Sub-

section A(1), to be due for services or materials, there is no outstanding indebtedness known to said architect or engineer, after due inquiry, which is then due and payable for labor, wages, materials, supplies or services in connection with such work which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Property or any part thereof.

B. An affidavit sworn to by an executive officer of Lessee not more than thirty (30) days prior to the application for such withdrawal setting forth in substance as follows:

(1) That all materials and all property constituting the work described in the said certificate pursuant to the foregoing Subsection A of this Section and every part thereof, are free and clear of all encumbrances, except those created by Lessor and undetermined or inchoate liens or charges for indebtedness incidental to the work and which have not at the time been filed pursuant to law, and except encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate pursuant to the foregoing Subsection A of this Section, which encumbrances will be discharged upon payment of such indebtedness;

(2) That no part of the several amounts paid and/or due, as stated in said certificate pursuant to the foregoing Subsection A of this Section, has been or is being made the basis of the withdrawal of any moneys pursuant to this Section or Section 18.3 in any previous or then pending application, or has been paid out of the proceeds of insurance

received by Lessee as provided in Section 14.3 hereof; and

(3) That there is no default in the payment of the Basic Rent or any item of Additional Rent or other charge payable by Lessee hereunder.

C. An official search or other evidence satisfactory to Lessor and Assignee showing that there has not been filed with respect to the Property any mechanics' or other lien which has not been discharged of record, except such as will be discharged upon payment of the amount then requested.

Upon compliance with the foregoing provisions of this Section, Lessor shall, out of such insurance money, on request of Lessee or Assignee, pay or cause to be paid to the persons named in the certificate, pursuant to the foregoing Subsection A(1), the respective amounts stated in said certificate to be due to them, and/or shall pay or cause to be paid to Lessee the amount stated in said certificate to have been paid by Lessee, provided, however, that such payments shall not exceed in amount the fair value as stated in said certificate of the relevant work. Lessee agrees to file a notice of completion of such changes and alterations promptly and not less than one hundred twenty (120) days nor more than one hundred thirty (130) days after the filing of such notice Lessee shall furnish to Lessor an official search or other evidence satisfactory to Lessor showing that there has not been filed with respect to the Property any mechanics' or other lien which has not been discharged of record.

If the insurance money in the hands of Lessor or Assignee shall be insufficient to pay the entire cost of such work, Lessee agrees to pay the deficiency.

SECTION 17.3. Lessee's obligation to make payment of the Basic Rent and all items of Additional Rent and other

charges on the part of Lessee to be paid and to perform all other covenants and agreements on the part of Lessee to be performed shall not be affected by any such destruction or damage of the Property and Lessee hereby waives the provision of any statute or law now or hereafter in effect contrary to such obligation of Lessee as herein set forth, or which releases Lessee therefrom.

SECTION 17.4. Notwithstanding the other provisions of this Article, any insurance moneys in the hands of Lessor or Assignee shall not be required to be paid out (nor shall Section 17.6 be operative) if Lessee is in default in the performance of any of the terms, covenants or conditions in this Lease contained in respect to a matter as to which notice of default has been given and has not been remedied within the time limited in this Lease. Any insurance moneys payable to Assignee pursuant to the provisions of Article XIV shall be disbursed by Assignee in accordance with and to the extent provided in this Article.

SECTION 17.5. In the event that in conjunction with any work required to be performed under this Article, Lessee shall make other changes or alterations in accordance with the applicable provisions and conditions in Article XV, and Lessee shall have furnished a bond or made the deposit required under Section 15.1D, the insurance money received by Lessor or Assignee shall, nevertheless, be used and applied to the payment of the cost of changes or alterations under Article XV as well as to the payment for work done under this Article, in the manner and to the extent in this Article provided before the money so deposited as aforesaid under Article XV shall be used or disbursed under the provisions of Section 15.1E thereof.

SECTION 17.6. As used herein, the term "Total Destruction" shall mean the destruction on or after December 1, 1980* of all or such a substantial part of the Property that

* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

the Board of Directors of Lessee (i) shall determine in its good faith judgment within sixty (60) days after such destruction that restoration is not economically feasible, (ii) shall give written notice to Lessor and Assignee of such determination within ten (10) days thereafter, and (iii) shall agree to purchase the Property on the date that the insurance proceeds are finally adjusted and paid to the Lessor or Assignee at a purchase price as hereinafter determined in this Section 17.6.

Said purchase price shall be determined pursuant to the termination table, attached hereto as Table A, interpolated on a daily basis between the immediately preceding and next succeeding option dates; provided, however, that if the amount then required under the provisions of the Note to fully prepay the same plus accrued interest and premium under the provisions thereof and to discharge all other obligations of the Lessor under the Deed of Trust exceeds said purchase price determined pursuant to said Table A, then the purchase price shall be such greater amount. Said insurance proceeds (less any cost of recovery) shall be applied in payment of Lessee's obligation hereunder; and said insurance proceeds, together with such additional amount, if any, as may be paid by Lessee as the purchase price of the Property pursuant to this Section, shall be applied in the following order of priority:

A. Such amount shall first be applied to pay the Assignee the amount then required under the provisions of the Note to fully prepay the same plus accrued interest and premium, and to discharge all other obligations of Lessor under the Deed of Trust.

B. The balance of such amount, if any, shall then be paid to the Lessor; provided that in no event will the amount paid to Lessor, when added to the amount paid pursuant to paragraph A, exceed said purchase price.

C. Any excess after making the payments provided for in paragraphs A and B above shall be paid to the Lessee.

On payment by Lessee of said purchase price, and Assignee's receipt of the entire amount specified in paragraph A of this Section and Lessor's receipt of the entire amount specified in paragraph B, Lessor at Lessee's expense shall convey the Property by general warranty deed to Lessee free of any mortgage, lien, or encumbrance unless created by Lessee's default hereunder.

The right of Lessee to purchase the Property as provided in this Section 17.6 shall be exercisable only upon condition that at the time of the exercise of such right there exists no default in the performance of any of the terms, covenants or conditions of this Lease upon the part of Lessee to be performed, and such purchase shall become effective only upon compliance with all such terms, covenants and conditions to the date thereof.

ARTICLE XVIII

Condemnation

Section 18.1. If, during the term of this Lease, all of the Property shall be taken as a result of the exercise of the power of eminent domain (hereinafter referred to as the "Taking" or as the "proceeding"), this Lease and all right, title and interest of Lessee hereunder shall cease and come to an end on the date of payment in full of the award as finally determined pursuant to such Taking, provided that Lessee shall pay a purchase price, which shall be determined and paid in accordance with Section 18.4 hereof in consideration for the assignment of all of Lessor's right, title and interest in and to such award with respect to the Property.

Section 18.2. If, during the term of this Lease, less than all of the Property shall be taken in any such Taking, and the Board of Directors of Lessee shall determine in its good faith judgment within sixty (60) days after such Taking that the injury, damage or loss suffered from such Taking cannot be so repaired, restored or replaced that the remainder thereof can be effectively used in the business of Lessee, Lessee shall give written notice to Lessor and Assignee of such determination within ten (10) days thereafter and shall agree to purchase the Property for a purchase price, which shall be determined and paid in accordance with Section 18.4.

Upon payment by Lessee of said purchase price and Lessor's receipt of the entire amount specified in paragraph B of Section 18.4 and Assignee's receipt of the entire amount specified in paragraph A of Section 18.4, Lessor at Lessee's expense shall convey the Property by general warranty deed to Lessee free of any mortgage, lien or encumbrance unless created by Lessee's default hereunder.

The right of Lessee to purchase the Property as provided in this Section 18.2 shall not apply prior to December 1, 1980, without the written consent of Lessor or Assignee and shall be exercisable only upon condition that at the time of the exercise of such right there exists no default in the performance of any of the terms, covenants or conditions of this Lease upon the part of Lessee to be performed. Such purchase shall become effective only upon compliance with all such terms, covenants and conditions to the date thereof.

Section 18.3. If, during the term of this Lease, less than all the Property shall be taken in any such proceeding and Lessee does not purchase the Property as in Section 18.2 provided, this Lease shall, upon the vesting of title in the proceeding, terminate only as to the part so taken, and Lessor shall be entitled to and shall receive the total award made in such proceeding, and Lessee hereby assigns such award to Lessor. In any such case, Lessee covenants and

agrees, at Lessee's sole cost and expense (subject to reimbursement to the extent hereinafter provided) and under the supervision of an architect or engineer selected by Lessee, who may be in the employ of Lessee and shall be satisfactory to Lessor or Assignee, promptly to restore, repair or replace that portion of the Property not so taken to a complete architectural unit or units for the use and occupancy of Lessee as in this Lease expressed. Lessor agrees, in connection with such restoration, repair or replacement, to apply or cause to be applied the net amount of any award for damage to said building or buildings that may be received by it in any such proceeding, either to reimburse Lessee for expenditures made (1) to repair or restore the remaining portion of such building or buildings so that the same shall constitute a complete architectural unit or units or (2) to replace on the remainder of the Property the portion of any such building or buildings so taken (which shall include expenditures made for temporary repairs or for the protection of the Property pending the completion of permanent repairs, restorations or replacements, or to prevent interference with the business operated thereon, and repairs, restorations and replacements then in process in so far as actually made or constructed) or to pay contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for said repairs, restorations or replacements (but the amount so applied shall not include the cost of any alteration, construction, change or improvement that Lessee may desire to make that is not necessary to restore that portion of the building or buildings not so taken to a complete architectural unit of substantially the same usefulness, design and construction as immediately before such taking), and the said net award may be withdrawn and shall be paid out as hereinafter provided from time to time as such repair, restoration or replacement progresses upon the written request of Lessee, which shall be accompanied by

A. A certificate of the architect or engineer in charge of the repair, restoration or replacement, dated not more than thirty (30) days prior to such request, setting forth in substance as follows:

(1) That the injury, damage and loss from such Taking have been or can be so repaired, restored or replaced that the remaining portions of the Property can be effectively used in the business of Lessee;

(2) That the sum then requested to be withdrawn either has been paid by Lessee and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated), who have rendered services or furnished materials for certain repairs, restorations or replacements, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid and/or due to each of said persons in respect thereof, and also stating the fair value of such repairs, restorations or replacements at the time of acquisition thereof; and

(3) That, except for the amounts, if any, stated in said certificate pursuant to the foregoing Subsection A(2) to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, to said architect or engineer, which is then due and payable for labor, wages, services, materials or supplies in connection with said repairs, restorations or replacements, which, if unpaid, might become the basis of a vendor's, mechanics', laborers' materialmen's statutory or other similar lien upon the Property or any part thereof.

B. An affidavit sworn to by an executive officer of Lessee not more than thirty (30) days prior to the application for such withdrawal setting forth in substance as follows:

(1) That all materials and all property constituting the repairs, restorations and replacements described in the said certificate pursuant to the foregoing Subsection A of this Section and every part thereof, are free and clear of all encumbrances, except those created by Lessor and undetermined or inchoate liens or charges for indebtedness incidental to such repairs, restorations and replacements and which have not at the time been filed pursuant to law, and except encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate pursuant to the foregoing Subsection A of this Section, which encumbrances will be discharged upon payment of such indebtedness;

(2) That no part of the several amounts paid and/or due, as stated in said certificate pursuant to the foregoing Subsection A of this Section, has been or is being made the basis of the withdrawal of any moneys pursuant to this Section or Section 17.2 in any previous or then pending application or has been paid out of the proceeds of insurance received by Lessee as provided in Section 14.3 hereof; and

(3) That there is no default in the payment of the Basic Rent or any item of Additional Rent or other charge payable by Lessee hereunder.

C. An official search or other evidence satisfactory to Lessor showing that there has not been filed with respect to the Property any mechanics' or other lien which has not been discharged of record, except such as will be discharged upon payment of the amount then requested.

Upon compliance with the foregoing provisions of this Section, Lessor shall, out of the proceeds of such net award, on request of Lessee, pay or cause to be paid to the persons named in the certificate, pursuant to the foregoing Subsection A(2), the respective amounts stated in said certificate to be due to them, and/or shall pay or cause to be paid to Lessee the amount stated in said certificate to have been paid by Lessee, *provided however,* that such payments shall not exceed in amount the fair value as stated in said certificate of the relevant repairs, restorations or replacements. Lessee agrees to file a notice of completion of such changes and alterations promptly and not less than one hundred twenty (120) days nor more than one hundred thirty (130) days after the filing of such notice, Lessee shall furnish to Lessor an official search or other evidence satisfactory to Lessor showing that there has not been filed with respect to the Property any mechanics' or other lien which has not been discharged of record.

If payment of the net award as aforesaid shall not be received by Lessor in time to permit payments as the work of repairs, restorations or replacements progresses, Lessee shall, nevertheless, perform and fully pay for such work without delay (except for Unavoidable Delays), and payment of the amount to which Lessee may be entitled shall thereafter be made by Lessor out of said net award as and when payment of such net award is received by Lessor. If the funds to be applied by Lessor as in this Section provided shall be insufficient to pay the entire cost of such repairs, restorations or replacements, Lessee agrees to pay the deficiency.

SECTION 18.4. The purchase price referred to in Section 18.1 and 18.2 hereof shall be determined pursuant to the

termination table, attached hereto as Table A, interpolated on a daily basis between the immediately preceding and next succeeding option dates; provided, however, that if the amount then required under the provisions of the Note to fully prepay the same plus accrued interest and premium under the provisions thereof and to discharge all other obligations of the Lessor under the Deed of Trust exceeds said purchase price determined pursuant to said Table A, then the purchase price shall be such greater amount. The total award for the Property in the proceeding (less any cost of recovery) shall be applied in payment of Lessee's obligation hereunder; and said award, together with such additional amount, if any, as may be paid by Lessee as the purchase price of the Property pursuant to this Section, shall be applied in the following order of priority.

A. Such amount shall first be applied to pay the Assignee the amount then required under the provisions of the Note to fully prepay the same plus accrued interest and premium, and to discharge all other obligations of Lessor under the Deed of Trust.

B. The balance of such amount, if any, shall then be paid to the Lessor; provided that in no event will the amount paid to Lessor, when added to the amount paid pursuant to paragraph A, exceed said purchase price.

C. Any excess after making the payments provided for in paragraphs A and B above shall be paid to the Lessee.

SECTION 18.5. Lessee and the Assignee shall each have the right in any Taking at its sole costs and expense to participate, by counsel of its own choice, in the proceeding and any appeals which may be taken therefrom. Notwithstanding anything in this Article contained to the contrary, in any Taking of the Property or any part thereof, whether or not this Lease is terminated as in this Article provided, Lessee shall have the right to prove in the proceeding and

to receive any award which may be made for damage to or condemnation of Lessee's personal property.

SECTION 18.6. A Taking of any vault or other space not included within the Property as above described, or a Taking which shall result merely in the removal of projecting portions of the building upon any street, or of a portion of the outer facing of the walls of said building not requiring the demolition or reconstruction of a main building wall, or a Taking of an underground right-of-way for a subway, conduit or other purpose not necessitating the demolition or substantial alteration of any portions of such building or buildings above the street level shall not be deemed a Taking of the Property for the purpose of this Article, and this Lease shall not be affected by any such Taking of the nature in this Section referred to. Any alteration required because of a Taking of the nature in this Section referred to shall be done by Lessee at its sole cost and expense and Lessor covenants and agrees to apply the net amount of any award, after deduction of all costs and expenses, that may be made for any such taking of the nature in this Section referred to for physical damage, if any, to the Property in the same manner as in Section 18.3 provided.

SECTION 18.7. If all or any portion of the Property shall be taken by the exercise of the right of eminent domain for governmental occupancy for a limited period, this Lease shall not terminate and Lessee shall continue to perform and observe all of its obligations hereunder as though such Taking had not occurred except only to the extent that it may be prevented from so doing by reason of such Taking. In the event of a Taking of the nature in this Section referred to for a period of time ending on or prior to the date specifically fixed for the expiration of the term hereof, Lessee shall be entitled to receive the entire amount of any award made for such Taking, whether paid by way of damages, rent or otherwise. In the event of such a Taking for a period which extends beyond the date specifically fixed

for the expiration of the term hereof, Lessee shall be entitled to receive that portion of any award made for such Taking (whether paid by way of damages, rent or otherwise), allocable to the period of time from the date of such a Taking to the date specifically fixed for the expiration of the term hereof, and Lessor shall be entitled to receive the balance of such award. Lessee covenants that at the termination of any such governmental occupancy, it will, at its sole cost and expense, restore the Property as nearly as may be reasonably possible to the condition prior to such taking, but Lessee shall not be required to do such restoration work (i) if on or prior to the date of such termination of governmental occupancy, the date specifically fixed for the expiration of the term of this Lease shall have occurred and (ii) if Lessee shall have paid to Lessor the portion, if any, of the award made in connection with any such Taking as compensation for the cost of restoring the Property to the condition prior to such taking.

ARTICLE XIX

Limitation of Lessor's Liability

Section 19.1. The term "*Lessor*" as used in this Lease so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Property. In the event of any transfer or transfers of the title to the Property, Lessor herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed. Any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be turned over to the grantee. Any amount then due and payable to Lessee by Lessor or the

then grantor under any provision of this Lease shall be paid to Lessee. Upon any such transfer, the grantee or transferee shall expressly assume and agree to be bound by, subject to the limitations of this Article, all of the terms, covenants and conditions in this Lease contained to be performed on the part of Lessor, it being intended hereby that the covenants and obligations contained in this Lease on the part of Lessor shall, subject as aforesaid, be binding on Lessor, its successors and assigns, only during and in respect of their respective successive periods of ownership.

ARTICLE XX

Optional Purchase of Property

Section 20.1. Unless a default hereunder by Lessee shall have occurred and be continuing, Lessee, at its election, upon not less than thirty (30) days' prior written notice to Lessor and Assignee, may purchase the Property on any of the following dates, by paying to Lessor or Assignee a purchase price as follows:

DATE	PURCHASE PRICE
November 30, 1980*	$6,325,169.85
November 30, 1984*	$5,432,607.52
November 30, 1989*	$4,187,328.04
November 30, 1994*	$2,145,935.00

provided, that Lessee shall assume all indebtedness against the Property evidenced by the Note and shall be entitled to credit against such purchase price in the amount of such indebtedness assumed, if any, the balance of such purchase price to be paid in cash. Upon receipt of such purchase price and assumption of such indebtedness on any such date, this Lease shall terminate, and Lessor at the expense of

* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

Lessee will convey the Property to Lessee free of any mortgage, lien or encumbrance other than the Deed of Trust or which Lessee shall have directly or indirectly created or permitted to be created or to remain.

SECTION. 20.2. Anything in the foregoing Section 20.1 hereof to the contrary notwithstanding, this Lease shall terminate as provided in said Section 20.1 only upon compliance with the following conditions precedent to such termination:

A. Lessee shall have assumed all indebtedness evidenced by the Note and all obligations of the Lessor under the Deed of Trust pursuant to an assumption agreement (hereinafter called the "Assumption Agreement") in form, scope and substance satisfactory to the Assignee and its special counset.

B. Lessee shall have received, in form, scope and substance satisfactory to the Assignee, the formal approval of the Board of Governors of the Federal Reserve System to the purchase of the Property by Lessee and the consummation of the transactions contemplated by the Assumption Agreement, to the extent that such approval is required, or proof satisfactory to the Assignee that no such approval is required; and a copy of such approval, certified as a true copy by the President or a Vice President of Lessee, or such proof that no such approval is required, shall have been furnished to the Assignee.

C. Lessee shall have received, in form, scope and substance satisfactory to the Assignee, the formal approval of the Arkansas Bank Commissioner to the purchase of the Property by Lessee and the consummation of the transactions contemplated by the Assumption Agreement, to the extent that such approval is required, or a written ruling of said Commissioner that no such approval is required; and a copy of such approval or of such ruling, certified as a true copy by the President or a Vice President of Lessee, shall have been furnishd to the Assignee.

D. The Assumption Agreement shall have been duly executed and delivered by Lessee to the Assignee.

E. The execution and delivery of the Assumption Agreement shall not affect or reduce any of the obligations of the Lessor for payment of the indebtedness evidenced by the Note or performance of any of the terms, covenants or conditions of the Deed of Trust on the part of the Lessor to be performed.

F. The execution and delivery of the Assumption Agreement and performance thereof shall not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument to which Lessee is a party or by which Lessee is bound; and an Officers' Certificate to the foregoing effect and such other proof of the foregoing as the Assignee may require shall have been delivered to the Assignee.

G. The Assignee shall have received from counsel for Lessee and Messrs. House Holmes & Jewell, special counsel for the Assignee, opinions in scope and substance satisfactory to the Assignee, as to:

(i) the due authorization, execution and delivery of the Assumption Agreement and the legality, validity and enforceability thereof in accordance with its terms;

(ii) the formal approval of the Board of Governors of the Federal Reserve System to the purchase of the Property by Lessee and the consummation of the transactions contemplated by the Assumption Agreement, or to the effect that no such approval is required;

(iii) the formal approval of the Arkansas Bank Commissioner to the purchase of the Property by Lessee and the consummation of the transactions contemplated by the Purchase Agreement, or as to the written ruling of said Commissioner that no such approval is required;

(iv) such other matters incident to the purchase of the Property and assumption of the indebtedness and obligations of the Deed of Trust as the Assignee may reasonably request.

Lessee shall pay the fees and disbursements of special counsel for the Assignee for their services to the Assignee with relation to the transactions contemplated by this Article XX, including the furnishing of the foregoing opinions and any other opinions which the Assignee may request on questions incident to such contemplated transactions, and all printing, filing, recording and other expenses in connection with such transactions, and shall reimburse the Assignee for any and all out-of-pocket expenses in connection therewith.

ARTICLE XXI

Right of Lessor or Assignee to Perform Lessee's Covenants, Etc.

Section 21.1. If Lessee shall fail to make any payment or perform any act required to be made or performed hereunder, Lessor or Assignee, after not less than 10 days' prior written notice to or demand upon Lessee (or without notice in the event of an emergency) and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee, and may enter upon the Property or any part thereof for such purpose and take all such action thereon as, in Lessor's or Assignee's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor or Assignee and all costs, fees and expenses (including without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the rate of 10% from the date of payment

or incurring, shall constitute Additional Rent hereunder and shall be paid by Lessee to Lessor or Assignee on demand.

ARTICLE XXII

Certificate By Lessee

Section 22.1. Lessee agrees at any time and from time to time upon not less than ten (10) days prior notice by Lessor to execute, acknowledge and deliver to Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Basic Rent and any item of Additional Rent and other charges have been paid in advance, if any, and stating whether or not to the best knowledge of the signer of such certificate Lessee is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the signers may have knowledge, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser of the Property or the holder of any mortgage or deed of trust or any assignee of any mortgage or deed of trust upon the Property.

ARTICLE XXIII

Inspection of Premises by Lessor, Etc.

Section 23.1. Lessee agrees to permit Lessor and the authorized representatives of Lessor to enter the Property at all reasonable times during usual business hours for the purpose of (a) inspecting the same and (b) making any necessary repairs to the Property and performing any work therein that may be necessary by reason of Lessee's default under the terms of this Lease. Nothing herein shall imply any duty upon the part of Lessor to do any such work which under any provisions of this Lease Lessee may be required

to perform and the performance thereof by Lessor shall not constitute a waiver of Lessee's default in failing to perform the same. Lessor shall not in any event be liable for inconveniences, annoyance, disturbance, loss of business or other damage of Lessee by reason of making such repairs or the performance of any such work in the Property, or on account of bringing materials, supplies and equipment into or through the Property during the course thereof, and the obligations of Lessee under this Lease shall not thereby be affected in any manner whatsoever. Lessor agrees, however, in connection with the making of such repairs or the performance of such work that it will cause as little inconvenience, annoyance, disturbance, loss of business or other damage to Lessee as may reasonably be possible under the circumstanecs.

ARTICLE XXIV

Assignment And Subletting

Section 24.1. Neither this Lease nor the term hereby demised shall, under any circumstances, be assigned, transferred or mortgaged by Lessee, its successors or assigns, or the personal representative of any assignee or transferee, without, in each case, the prior written consent of Lessor or Assignee being first had and obtained.

Section 24.2. Lessee shall have the right to sublet all or any part of the Property at any time or from time to time, but no such subletting shall affect or alter the Lessee's obligations hereunder.

ARTICLE XXV

Conditional Limitations—Default Provisions

Section 25.1. If, during the term of this Lease,

(a) Lessee shall make an assignment for the benefit of creditors, or

(b) a voluntary petition be filed by Lessee under any law having for its purpose the adjudication of Lessee a bankrupt, or the extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of the liabilities of Lessee or to which any property of Lessee may be subject, or under any law having for its purpose the reorganization (other than a merger in which the Lessee is the surviving corporation) or liquidation of Lessee, or

(c) any proceeding against Lessee of the type referred to in clause (b) above seeking any such relief shall not have been dismissed within sixty (60) days after the commencement thereof, or

(d) a permanent receiver be appointed for the property of Lessee by order of a court of competent jurisdiction by reason of the insolvency or alleged insolvency of Lessee, or

(e) any department of the state or federal government, or any officer thereof duly authorized, shall take possession of the business or property of Lessee by reason of the insolvency or alleged insolvency of Lessee,

Lessor may, at its option, give to Lessee a notice of election to end the term of this Lease at the expiration of five (5) days from the date of service of such notice. If such notice is given, then at the expiration of said five (5) days the term of this Lease and all right, title and interest of Lessee hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term of this Lease, and Lessee will then quit and surrender the Property to Lessor, but Lessee shall remain liable as hereinafter provided in this Article XXV.

Section 25.2. If, during the term of this Lease,

(a) Lessee shall make default in fulfilling any of the covenants of this Lease (other than the covenants for the payment of the Basic Rent or any items of Additional Rent or other charges payable by Lessee hereunder), or

(b) The Property shall be used in violation of Article VI or Article XIII hereof, or

(c) the Property shall be left vacant or unoccupied or be deserted for a period of ninety (90) days, unless caused by Unavoidable Delays, or

(d) this Lease, without the prior written consent of Lessor and Assignee shall be assigned or transferred in any manner or shall, by operation of law, pass to or devolve upon any third party,

Lessor may give to Lessee notice of any such default or of the happening of any contingency in this Section referred to. If at the expiration of sixty (60) days after the service of such notice the default or the happening of the contingency upon which said notice was based shall continue to exist, or in the case of a default or contingency which cannot with due diligence be cured within a period of sixty (60) days, if Lessee fails to proceed promptly after the service of such notice and with all due diligence to cure the same and thereafter to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not susceptible of being cured with due diligence within sixty (60) days that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the same with all due diligence), Lessor may give to Lessee a notice of intention to end the term of this Lease at the expiration of five (5) days from the date of the service of such second notice. At the expiration of said five (5) days, the term of this Lease and all right, title and interest of Lessee hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term, and Lessee will then quit and surrender the Property to Lessor, but Lessee shall remain liable as hereinafter provided in this Article XXV.

SECTION 25.3. If Lessee shall make default in the payment of the Basic Rent expressly reserved hereunder or any part of the same, and such default shall continue for fifteen (15) days after notice thereof by Lessor, or shall make default in the payment of any item of Additional Rent or other charge required to be paid by Lessee hereunder or any part of the same, and such default shall continue for thirty (30) days after notice thereof by Lessor, or if this Lease shall expire as in Section 25.1 or Section 25.2 provided, Lessor or Lessor's agents and servants may immediately or at any time thereafter reenter the Property and remove all persons and all or any property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy said premises, as of their former estate, together with all additions, alterations and improvements.

SECTION 25.4. Upon the expiration of the term of this Lease by reason of the happening of any of the events hereinabove described in Section 25.1, Section 25.2, or Section 25.3, or in the event of the termination of this Lease by summary dispossess proceedings or under any provision of law now or at any time hereafter in force, by reason of or based upon or arising out of default under or breach of this Lease on the part of Lessee, or upon Lessor recovering possession of the Property in the manner or in any of the circumstances hereinabove mentioned, or in any other manner or circumstances whatsoever, whether with or without legal proceedings, by reason of or based upon or arising out of a default under or breach of this Lease on the part of Lessee, then Lessor may, at its option, at any time, and from time to time, relet the Property or any part or parts thereof for the account of Lessee or otherwise, and receive and collect the rents therefor, applying the same first to the payment of such expenses as Lessor may have incurred in recovering possession of the Property, including legal expenses and attorney's fees, and for putting the same into

good order or condition or preparing or altering the same for re-rental, and expenses, commissions and charges paid, assumed or incurred by Lessor in and about the reletting of the Property, and then to the fulfillment of the covenants of Lessee hereunder. Any such reletting herein provided for may be for the remainder of the term of this Lease or for a longer or shorter period. In any such case and whether or not the Property or any part thereof be relet, Lessee shall pay to Lessor the Basic Rent and any items of Additional Rent and all other charges required to be paid by Lessee up to the time of such termination of this Lease, or of such recovery of possession of the Property by Lessor, as the case may be. Thereafter, Lessee covenants and agrees, if required by Lessor, to pay to Lessor until the end of the term of this Lease the equivalent of the amount of all the Basic Rent reserved herein and any items of Additional Rent and all other charges required to be paid by Lessee, less the net avails of reletting, if any. The same shall be due and payable by Lessee to Lessor on the several rent days above specified, that is to say, upon each of such rent days Lessee shall pay to Lessor the amount of the deficiency then existing. In any of the circumstances hereinabove mentioned in which Lessor shall have the right to hold Lessee liable upon the several rent days herein specified to pay Lessor the equivalent of the amount of all the Basic Rent and any items of Additional Rent and all other charges required to be paid by Lessee less the net avails of reletting, if any, Lessor shall have the election in place and in stead of holding Lessee so liable, forthwith to recover against Lessee, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of such termination of this Lease, or of such recovery of possession of the premises by Lessor, as the case may be, represents the then present worth of the excess, if any, of the aggregate of the Basic Rent and any items of Additional Rent and all other charges payable by Lessee hereunder that would have accrued for the balance of the term over the

aggregate rental value of the Property for the balance of such term. Nothing herein contained shall limit or prejudice Lessor's right to prove and obtain as liquidated damages arising out of any termination of this Lease as a result of a happening of any of the contingencies referred to in Section 25.1, Section 25.2 or Section 25.3 the maximum amount allowed by any such statute or rule of law which may govern such proceeding in which such damages are to be proved, whether such amount be greater, equal to or less than the amount of the then present worth of the excess of the Basic Rent and any items of Additional Rent and all other charges payable by Lessee hereunder over the rental value referred to above.

Section 25.5. Lessee hereby expressly waives the service of notice of intention to re-enter provided for in any statute now or hereafter in force, or to institute legal proceedings to that end, and also waives any and all right of redemption provided for in any statute now or hereafter in force in case Lessee shall be dispossessed by a judgment or by warrant of any court or judge. Lessee also waives and will waive any and all right to a trial by jury provided for in any statute now or hereafter in force in the event that summary proceedings or any other action or proceeding shall be instituted by Lessor. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meaning.

ARTICLE XXVI

Cumulative Remedies—No Waiver

Section 26.1. The specific remedies to which Lessor or Lessee may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them of any provision of this Lease. The failure of Lessor to insist in any one or more cases upon the strict

performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by Lessor of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either party hereto of any provisions in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Lessor and Lessee. In addition to the other remedies in this Lease provided, Lessor and Lessee shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions or provisions of this ease or to a decree compelling performance of any of such covenants, conditions or provisions.

ARTICLE XXVII

Invalidity of Particular Provisions

Section 27.1. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XXVIII

Notices

Section 28.1. All notices, demands and requests which may or are required to be given by either party to the other shall be in writing. All notices, demands and requests by Lessor to Lessee shall be deemed to have been properly

given if served personally on an executive officer of Lessee, or if sent by United States first class registered mail, postage prepaid, addressed to Lessee at the Property, or at such other place as Lessee may from time to time designate in a written notice to Lessor. All notices, demands and requests by Lessee to Lessor shall be deemed to have been properly given if served personally on an executive officer of Lessor, or if sent by United States first class registered mail, postage prepaid, addressed to Lessor at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas 72206, or at such other place as Lessor may from time to time designate in a written notice to Lessee, and duplicates of all such notices, demands and requests shall similarly be sent to the Assignee. Notices, demands and requests which are served by first class registered mail upon Lessor or Lessee in the manner aforesaid, shall be deemed sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed by United States first class registered mail as aforesaid in any Post Office or Branch Post Office regularly maintained by the United States Government within the continental limits of the United States.

ARTICLE XXIX

Subordination of Deed of Trust to Lease

Rights of Assignee

Section 29.1. Except as provided in Section 17.4 of the Deed of Trust, the leasehold estate created by this Lease shall constitute a prior encumbrance to the lien of any mortgage or deed of trust now or hereafter placed upon the Property, including the Deed of Trust.

Section 29.2. It is understood and agreed between Lessor and Lessee that all right, title and interest of Lessor in and to this Lease will be assigned by Lessor to the Assignee as additional security for the Note. It is expressly agreed

between Lessor and Lessee that this Lease shall not be terminated (except pursuant to Section 18.1 or Article XX) or surrendered by either the Lessee or the Lessor and neither this Lease nor any provision thereof may be amended in any manner, modified, altered, amended, changed or cancelled without the express written consent of the Assignee. Any attempted termination, surrender, modification, alteration, amendment, change or cancellation otherwise than as permitted in this Section shall be without force and effect and shall be null and void, notwithstanding any express rights of termination, surrender, modification, alteration, amendment, change or cancellation contained in Articles XVII, XVIII, or elsewhere in this Lease except Section 18.1 or Article XX.

SECTION 29.3. Under the terms of the Deed of Trust and of the Assignment to be executed pursuant to the Note Purchase Agreement, Lessor will thereby assign to Assignee as security for the Note all Basic Rent payable hereunder, and Lessee is hereby expressly directed and authorized upon demand of Assignee to pay such Basic Rent pursuant to such Assignment to Assignee in accordance with all the terms, provisions and conditions of this Lease. No Basic Rent shall be prepaid prior to the due date thereof without the prior written consent of Assignee.

ARTICLE XXX

QUIET ENJOYMENT

SECTION 30.1. Lessor covenants and agrees that Lessee, upon paying the Basic Rent and any items of Additional Rent and all other charges herein provided for and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Property during the term of this Lease without hindrance or molestation of anyone claiming by, through or under Lessor, subject, however, to Permitted Exceptions.

ARTICLE XXXI

DEFINITIONS

SECTION 31.1. As used in this Lease, the following terms have the following respective meanings:

Additional Rent: as defined in Section 4.1.

Assignee: the person, firm, corporation or other entity to which Lessor's interest under this Lease shall at the time have been assigned; unless the context otherwise requires, references to "Lessor or Assignee" shall mean Lessor alone, if no such assignment shall be in effect, and the Assignee and not Lessor if and so long as any such assignment shall be in effect.

Assignment: the assignment by Lessor of its right, title, and interest hereunder to New York Life Insurance Company pursuant to the Note Purchase Agreement.

Basic Rent: as defined in Section 3.1.

Completion Date: as defined in Section 4D of the Note Purchase Agreement.

Construction Contract: the contract between Worthen Bank & Trust Company and Matzon-Bellows, a joint venture, for construction of the Company Improvements.

Deed of Trust: the Deed of Trust to be executed pursuant to the Note Purchase Agreement, constituting a first deed of trust lien on the Property and other property and a present assignment of this Lease and the rents and other sums payable by Lessee hereunder.

Default: any condition or event which constitutes or which, after notice or lapse of time or both, would constitute a default under Article XXV.

Ground Lease: The Ground Lease referred to in Section 1.1.

Improvements: as defined in Section 1.1(a).

Initial Term: as defined in Section 1.2.

Insurance Requirements: all terms of any insurance policy covering or applicable to the Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Property or any part thereof or any use or condition of the Property or any part thereof.

Legal Requirements: all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers of governments, Federal, state and municipal, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Property or any part thereof, or any of the adjoining sidewalks, streets or ways, or any use or condition of the Property or any part thereof.

Lessee's personal property: all personal property owned by Lessee on or about the Property and excluded from this Lease under Section 1.1 hereof.

Note: as defined in the Note Purchase Agreement.

Note Purchase Agreement: the Note Purchase Agreement, dated as of May 1, 1968, between Lessor and New York Life Insurance Company.

Officer's Certificate: a certificate signed by the President or a Vice President and the Treasurer or an Assistant Treasurer of Lessee and delivered to Lessor and Assignee.

Permitted Exceptions: the items, if any, set forth in Schedule 1 hereto insofar as the same may at the time be in effect and applicable.

Property: as defined in Section 1.1.

Quarterly Installment Dates: as defined in Section 3.3.

Taking: a taking during the term hereof of all or any part of the Property, or any interest therein or right accruing thereto including, without limitation, any right of access thereto existing on the date of this Lease, as the result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade affecting the Property or any part thereof.

Unavoidable Delays: delays due to strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of Lessee; lack of funds shall not be deemed a cause beyond the control of Lessee.

ARTICLE XXXII

No Merger of Title

SECTION 32.1. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate and/or the Ground Lease by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest or in any such leasehold estate and (b) the fee estate and/or the Ground Lease or any interest therein, and no such merger shall occur unless and until all persons, corporations, firms and other entities, including each Assignee, having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate and/or the Ground Lease estate shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE XXXIII

Special Covenants of Lessee

Section 33.1. Lessee hereby agrees to execute the Consent and Agreement referred to in paragraph 41 of the Note Purchase Agreement and to join with Lessor in the execution of a deed of trust dated as of December 1, 1969*, covering (in addition to certain other property of Lessor) Lessee's fee title to Tract A and its land adjacent thereto, as security for the payment of all rent due from Lessee to Lessor and the performance by Lessee of all other obligations required of it under this Building Lease, and also for the purpose of further inducing New York Life Insurance Company to purchase the Note secured, in part, by the Property. Execution of such deed of trust shall never be deemed to make the Lessee liable in any manner, contingent or otherwise, on the indebtedness of Lessor to New York Life Insurance Company unless Lessee shall assume such indebtedness as contemplated in Section 20.2 hereof.

Section 33.2. Lessee hereby agrees to execute a Guaranty to First National City Bank dated May 1, 1968, and to join with Lessor in the execution of a mortgage dated as of May 1, 1968, to First National City Bank covering (in addition to certain other property of Lessor) Lessee's fee title to Tract A and its land adjacent thereto, as security for the payment of all rent due from Lessee to Lessor and the performance by Lessee of all other obligations required of it under this Building Lease, and also for the purpose of further inducing First National City Bank to provide a construction loan to Lessor, secured in part by the Property. Execution of such mortgage shall never be deemed to make Lessee liable in any manner, contingent or otherwise, on the indebtedness of Lessor to First National City Bank upon the construction loan.

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* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

ARTICLE XXXIV

General

Section 34.1. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. Subject to the provisions hereof, all the terms and provisions of this Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, and, in particular, shall insure to the benefit of and be enforceable by any Assignee. The table of contents and headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof. This Lease may be executed in several counterparts, each of which is an original, but all of which shall constitute one instrument.

In Witness Whereof, the parties hereto have caused this Lease to be executed and their respective corporate seals to be hereunto affixed and attested by their respective officer thereunto duly authorized.

Attest:
/s/ M. R. Sadum
Secretary

Frank Lyon Company, *Lessor*
By /s/ C. W. Abrams
President

Attest:
/s/ Booker Worthen
Secretary

Worthen Bank & Trust Company, *Lessee*
By /s/ Edward M. Penick
President

(Acknowledgements Omitted in Printing)

SCHEDULE 1 OF BUILDING LEASE

The land (Tract A) referred to in Section 1.1(a) of the Building Lease, dated as of May 1, 1968, between Frank Lyon Company, Lessor, and Worthen Bank & Trust Company, Lessee, to which this Schedule 1 is attached, consists of a parcel of land in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

BEGINNING at the Southwest corner of Lot 6, Block 84, Original City of Little Rock; thence northerly 160.33 feet along the West side of Lots 6, 5, 4, and 3 to a point 139.67 feet south of the Northwest corner of said Block 84; thence easterly 140.0 feet to a point on the East side of Lot 3, located 139.67 feet South of the Northeast corner of Lot 1; thence 43.88 feet in a southerly direction along the East side of Lots 3 and 4; thence easterly 160.0 feet to a point on the East side of Lot 9, located 116.45 feet North of the Southeast corner of Lot 7; thence southerly 116.45 feet along the East side of Lots 9, 8 and 7, to the Southeast corner of Lot 7; thence westerly 300.0 feet along the South side of Lots 7 and 6 to the point of beginning, LESS AND EXCEPT—

(a) the air space above the North 29.33 feet of Tract A beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the Improvements, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations

thereon, together with the right of ingress and egress for such purposes, provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to Improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

SUBJECT, HOWEVER, to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of City of Little Rock, Arkansas, to Worthen Bank & Trust Company.

FURTHER SUBJECT to liens for unpaid taxes and assessments and to unfiled mechanics' and materialmens' liens.

TABLE A

Option* Date	Purchase Price
12-1-69	$7,889,900.00
3-1-70	$7,871,482.07
6-1-70	$7,852,739.28
9-1-70	$7,833,665.92
12-1-70	$7,814,256.22
3-1-71	$7,794,504.27
6-1-71	$7,774,404.08
9-1-71	$7,753,949.55
12-1-71	$7,733,134.48
3-1-72	$7,711,952.53
6-1-72	$7,690,397.30
9-1-72	$7,668,462.24

* To be adjusted accordingly if the Closing Date of the Note Purchase Agreement shall be other than December 1, 1969.

12-1-72	$7,646,140.74
3-1-73	$7,623,425.98
6-1-73	$7,600,311.09
9-1-73	$7,576,789.08
12-1-73	$7,552,852.81
3-1-74	$7,528,495.04
6-1-74	$7,503,708.38
9-1-74	$7,478,485.32
12-1-74	$7,452,818.25
3-1-75	$7,426,699.38
6-1-75	$7,400,120.82
9-1-75	$7,373,074.52
12-1-75	$7,345,552.31
3-1-76	$7,317,545.85
6-1-76	$7,289,046.68
9-1-76	$7,260,046.18
12-1-76	$7,230,535.59
3-1-77	$7,200,505.99
6-1-77	$7,169,948.31
9-1-77	$7,138,853.30
12-1-77	$7,107,211.59
3-1-78	$7,075,012.61
6-1-78	$7,042,248.63
9-1-78	$7,008,908.77
12-1-78	$6,974,982.97
3-1-79	$6,940,460.99
6-1-79	$6,905,332.43
9-1-79	$6,869,586.68
12-1-79	$6,833,212.95
3-1-80	$6,796,200.29
6-1-80	$6,758,537.53
9-1-80	$6,720,213.32
12-1-80	$6,681,216.10
3-1-81	$6,633,502.18
6-1-81	$6,584,956.01
9-1-81	$6,535,563.14
12-1-81	$6,485,308.87

TABLE A

Option Date	Purchase Price
3-1-82	$6,421,141.74
6-1-82	$6,369,282.80
9-1-82	$6,316,519.56
12-1-82	$6,262,836.34
3-1-83	$6,195,850.29
6-1-83	$6,140,453.40
9-1-83	$6,084,090.79
12-1-83	$6,026,745.63
3-1-84	$5,956,750.01
6-1-84	$5,897,574.92
9-1-84	$5,837,368.41
12-1-84	$5,776,112.55
3-1-85	$5,702,903.85
6-1-85	$5,639,693.93
9-1-85	$5,575,382.46
12-1-85	$5,509,950.34
3-1-86	$5,433,311.40
6-1-86	$5,365,792.67
9-1-86	$5,297,097.54
12-1-86	$5,227,205.62
3-1-87	$5,146,904.64
6-1-87	$5,074,784.59
9-1-87	$5,001,408.23
12-1-87	$4,926,753.78
3-1-88	$4,842,543.39
6-1-88	$4,765,509.77
9-1-88	$4,687,134.51
12-1-88	$4,607,394.35
3-1-89	$4,519,010.56
6-1-89	$4,436,729.97
9-1-89	$4,353,016.64
12-1-89	$4,267,845.73
3-1-90	$4,175,006.80

TABLE A

Option Date	Purchase Price
6-1-90	$4,087,123.33
9-1-90	$3,997,709.86
12-1-90	$3,906,739.87
3-1-91	$3,809,145.14
6-1-91	$3,715,278.83
9-1-91	$3,619,778.68
12-1-91	$3,522,616.37
3-1-92	$3,423,763.09
6-1-92	$3,323,189.54
9-1-92	$3,220,865.88
12-1-92	$3,116,761.82
3-1-93	$3,010,846.49
6-1-93	$2,903,088.42
9-1-93	$2,793,455.87
12-1-93	$2,681,916.27
3-1-94	$2,568,436.58
6-1-94	$2,452,983.21
9-1-94	$2,335,521.96
12-1-94 or thereafter	$2,216,019.91

P. Ex. 20

(Table of Contents Omitted in Printing)

NOTE PURCHASE AGREEMENT

AGREEMENT dated as of May 1, 1968, between FRANK LYON COMPANY, an Arkansas corporation (hereinafter called the Company") and NEW YORK LIFE INSURANCE COMPANY, a New York corporation (hereinafter called "the Purchaser");

W-I-T-N-E-S-S-E-T-H

1. *The Note and the Deed of Trust.* The Company will authorize its 6¾% Secured Note (hereinafter called "the Note") in the principal amount of $7,140,000 to be dated the closing date referred to in paragraph 3, to mature twenty-five (25) years from its date, and to be secured by a Deed of Trust (hereinafter called "the Deed of Trust") and creating, as security for the Note, a first lien upon

A. certain real property in Little Rock, Arkansas, described in the Deed of Trust as Tract A, the Company's interest as lessee in Tract A under the Ground Lease (hereinafter called "Ground Lease") referred to in paragraph 4B hereof and the building, fixtures and improvements (hereinafter called the "Building") now being constructed on Tract A.

B. certain other real property in Little Rock, Arkansas, described in the Deed of Trust as Tract B and the buildings, fixtures and improvements (hereinafter called the "Garage Facility") now being constructed on Tract B (Tracts A and B, the Company's interest as lessee under the Ground Lease, the Building and the Garage Facility being hereinafter collectively called the "Mortgaged Property"), and

C. the Company's interest as lessor in the lease (hereinafter called the "Building Lease") referred to in paragraph 4C hereof.

The Note will also be secured by a separate Assignment (hereinafter called the "Assignment") to be made by the Company to the Purchaser assigning to the Purchaser the Company's interest as lessor in and to the Building Lease.

There are annexed hereto and marked Exhibits A, B, and C, respectively, a form of the Note, a form of the Deed of Trust, and a form of the Assignment, and it is agreed that the Note, the Deed of Trust and the Assignment shall be substantially of the forms of said Exhibits A, B, and C, respectively, subject however, to such changes as shall be mutually agreed upon btween the parties hereto and their respective counsel.

2. *Representations and Warranties:* The Company represents and warrants as follows:

A. The Company is a corporation duly incorporated and validly existing under the laws of the State of Arkansas and is authorized to own property and do business in the State of Arkansas, and is in good standing in said State. The Company has heretofore delivered to the Purchaser copies of the consolidated balance sheets of the Company and its consolidated subsidiaries for the fiscal years ending April 30, 1963, April 30, 1964, December 31, 1964, December 31, 1965, and December 31, 1966, and the related consolidated statements of income and surplus for such fiscal years, all as certified by E. L. Gaunt & Company, independent certified public accountants. Said balance sheets and related statements (including the notes thereto) are correct and complete and truly represent the financial condition of the Company and such subsidiaries as at the respective dates indicated and the results of the operations of the Company and such subsidiaries for the respective periods indicated, and have been prepared in accordance with sound accounting practice consistently maintained throughout the periods indicated. Since December 31, 1966, there have been no material adverse changes in the financial condition of the Company from that set

forth in the balance sheet as at that date and no material adverse changes affecting the operations of the Company. It is agreed that the creation of any indebtedness of the Company to any person, firm or corporation during the period of construction of the Building for the purpose of financing the construction or equipment thereof prior to the issue of the Note and any mortgage, deed of trust or other lien or liens securing the payment of the same does not constitute a material adverse change within the meaning of this Section A or Section G of this paragraph or Section L of paragraph 4 hereof, but it is agreed that any such indebtedness shall be discharged in full on or before the closing date referred to in paragraph 3.

B. The Building is a twenty-four (24) story and single basement, centrally air conditioned, steel, concrete and masonry building with six (6) elevators and about 217,860 feet of net rentable space which is being constructed on Tract A in accordance with the plans and specifications therefor which have been delivered to and approved by the Purchaser. A copy of the construction contract with respect to the Building has been delivered by Worthen Bank & Trust Company (hereinafter called "the Bank") to, and found satisfactory by, the Company. All indebtedness for labor, wages, materials and supplies in connection with such construction of the Building shall have been paid in full, or arrangements therefor shall have been made, prior to the closing date. The estimated costs of such construction of the Building, including fixtures and equipment, is not less than, and the purchase price which is to be paid to the Bank by the Company therefor as reimbursement for such costs is, $7,640,000.

C. There are no material actions, suits or proceedings pending or to the knowledge of the Company threatened against or affecting the Company, or the property of the Company, at law or in equity or before or by any Federal, State, municipal or other governmental department, com-

mission, board, bureau, agency or instrumentality, domestic or foreign (except actions, suits or proceedings of the character normally incident to the kind of business conducted by the Company, which, if adversely determined, would not materially impair the Company's right to carry on its busiess substantially as now conducted or proposed to be conducted); and the Company is not in default with respect to any material order, writ, injunction, decree or demand of any court or Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

D. The consummation of the transactions herein contemplated and performance of this Agreement, the Ground Lease, the Building Lease, the Deed of Trust and the Assignment will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument to which the Company is a party or by which the Company or the properties of the Company may be bound or affected.

E. Since December 31, 1966, neither the business nor properties of the Company have been materially and adversely affected in any way as a result of any fire, explosion, accident, flood, windstorm, earthquake, strike, lockout, embargo or act of God or the public enemy.

F. The Company is not a "national" of "any designated foreign country" (or a person defined as a "designated foreign country") within the definitions in the Foreign Assets Control Regulations or the Cuban Assets Control Regulations of the United States Treasury Department, 31 C. F. R., Subtitle B, Chapter V, as amended, or any regulation or ruling issued thereunder.

G. The Company is not a party to or bound by any contract made otherwise than in the ordinary course of business and which in the opinion of the Company is a burdensome contract materially and adversely affecting the business, operations or financial condition of the Company.

H. The Company has not, either directly or through any agent, offered the Note or any similar security for sale to, or solicited any offer to buy the Note from, or otherwise approached or negotiated in respect thereof with, any person or persons other than the Purchaser, and the Company agrees that neither it nor any agent on its behalf will sell or offer the Note to, or solicit any offer to buy the Note from, or otherwise approach or negotiate in respect thereof with, any person or persons whomsoever so as thereby to render the issuance and/or sale of the Note a violation of Section 5 of the Securities Act of 1933, as amended.

I. All representations and warranties made by the Company herein and in any certificates delivered pursuant hereto shall survive the execution of the Deed of Trust and the Assignment and sale and delivery of the Note to the Purchaser herein provided for, notwithstanding any inquiry or investigation which the Purchaser may make in respect of the truth or accuracy of such representations and warranties.

3. *Purchase of the Note.* Subject to the terms of this Agreement, the Company hereby agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Company on such date after the completion of construction of the Building (as defined in paragraph 4D) and the completion of construction of the Garage Facility (except for space in the Building which shall not have been finished for occupancy), but in no event later than December 1, 1969, as the Company shall designate by not less than thirty (30) days notice in writing to the Purchaser, the Note in the principal amount of $7,140,000. The Company agrees that such notice shall be accompanied by certificates itemizing, in detail, the Total Cost of the Building (as defined in para-

graph 4D) and the Total Cost of the Mortgaged Property (as defined in the form of Consent and Agreement annexed hereto and marked Exhibit F) and showing the amounts paid and the amounts remaining to be paid in connection therewith.

Anything herein to the contrary notwithstanding, the Company shall be entitled to defer the closing date for a period not exceeding the lesser of one hundred eighty (180) days or the actual number of days by which construction of the Building shall have been delayed due to strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of the Company, provided that lack of funds shall not be deemed a cause beyond the control of the Company, and provided further that the Purchaser shall in no event be required to purchase the Note during the period from December 1, 1969 to January 15, 1970.

The Company will make delivery of the Note to the Purchaser by delivering the Note to the Purchaser at the Building, Center and Capitol Streets, Little Rock, Arkansas, against payment therefor in New York funds. The delivery of and payment for the Note as aforesaid are herein referred to as "the closing", and the date thereof as "the closing date".

The Purchaser represents that it is purchasing the Note for its own account, for investment, and not with a view to the distribution thereof, but subject, nevertheless, to the disposition of its property being at all times within its control.

4. *Conditions.* The obligation of the Purchaser to purchase and pay for the Note shall be subject to the following conditions:

A. The Company shall have a good and clear record and marketable title in fee simple absolute to the Building

and an unencumbered leasehold estate under the Ground Lease free and clear of all liens, charges and encumbrances prior to or on a parity with the lien of the Deed of Trust except:

(1) the matters set forth in the granting clause of the Deed of Trust;

(2) Permitted Encumbrances, as defined in Section 1.1 (10) of the Deed of Trust; and

(3) the Building Lease.

B. The Company shall have leased Tract A for a term commencing on or prior to the closing date and ending not less than seventy-five (75) years from the commencement date, substantially in the form and on the terms of Exhibit D hereto annexed, subject, however, to any such changes as shall be mutually agreed upon by the parties hereto and their respective counsel; the Ground Lease shall have been duly filed for record in each proper office in the State of Arkansas and shall be in full force and effect; and such leasing of Tract A shall have been approved by the Housing Authority of the City of Little Rock, Arkansas.

C. The Company shall have leased the Building to the Bank for a term commencing on or prior to, and ending not less than twenty-five (25) years after, the closing date under a Building Lease substantially of the form and terms of Exhibit E hereto annexed, subject, however, to such changes as shall be mutually agreed upon by the parties hereto and their respective counsel; and the Building Lease shall have been duly filed for record in each proper office in the State of Arkansas and shall be in full force and effect.

If the closing shall take place on a date other than December 1, 1969, all of said dates in Exhibit E shall be revised and adjusted appropriately to the mutual satisfaction of the parties.

D. The construction and equipping of the Building shall have been completed in accordance with plans and specifications furnished to and approved by the Purchaser, and all indebtedness for labor, wages, materials and supplies in connection with said construction and equipping shall have been paid in full or arrangements therefor satisfactory to the Purchaser shall have been made. Cotham, Wyman & Howland, Certified Public Accountants, Little Rock, Arkansas, shall have certified to the Purchaser the Total Cost of the Building (as hereinbelow defined) in reasonable detail and the amount thereof shall be at least $7,640,000. The "completion of construction of the Building" shall be established by the delivery to the Purchaser of a certificate (in form and substance satisfactory to the Purchaser) of Erhart, Eichenbaum, Rauch & Blass, Architects, to that effect, and of the certificate of the Housing Authority of the City of Little Rock, Arkansas, required by Paragraph 12 of that certain Contract for Sale of Land (Offer and Acceptance), Central Little Rock Project, ARK R-12, dated September 1, 1966.

For all purposes of this Agreement, "Total Cost of the Building" shall mean the aggregate of the costs reasonably and necessarily incurred and paid by the Company in connection with said construction and equipping of the Building and charged or properly chargeable to the property accounts of the Company in accordance with generally accepted accounting principles, including (but only if and to the extent the same is so charged and chargeable and conforms to such accounting principles) architect's fees and charges for labor, wages, salaries, materials, supplies, superintendence, insurance, accountants' and attorney's fees and expenses, interest on the construction loan, and all other items (other than operating, maintenance or start-up expenses) in connection with such construction and equipping and acquisition and so charged and properly chargeable and conforming to such accounting principles.

Compliance with the provisions of this Subsection shall be established by such certificates of architects, engineers and contractors and officers of the Company as shall be satisfactory in form and substance to the Purchaser. Before accepting any certificates as evidence of the compliance with the provisions of this Subsection, the Purchaser in its discretion may make any further inquiry or investigation into the truth or accuracy of the matters evidenced by any certificate furnished to the Purchaser as it may deem proper. If the Purchaser shall determine to make any such further inquiry or investigation, it shall be entitled to examine the books and records of the Company, personally or by agent or attorney, and unless satisfied with or without such examination of the truth or accuracy of the statements contained in such certificates, it shall be under no obligation to accept such certificates as evidence of such compliance.

E. The Deed of Trust shall have been duly executed and delivered in the form and substance aforesaid; the Deed of Trust or notices or financing statements with respect thereto shall have been duly filed for record in each proper office in the State of Arkansas in which the Deed of Trust or such notices or financing statements should be filed for record and recorded or filed in order to perfect and preserve the lien of the Deed of Trust on the property intended to be covered thereby; prior notice of the Deed of Trust shall have been given to the Housing Authority of the City of Little Rock, Arkansas; the Assignment shall have been duly executed and delivered in form and substance aforesaid; the Assignment shall have been duly filed for record in each proper office in the State of Arkansas in which the Assignment should be filed for record and recorded or filed in order to perfect and preserve the assignment of the Building Lease; all other instruments relating to the issuance and sale of the Note and all proceedings taken on or prior to the closing date in connection with the performance of this Agreement shall be satisfactory

to the Purchaser and its special counsel named in Subsection N of this Section; no Event of Default (as defined in Section 17.1 of the Deed of Trust) shall have occurred (which shall not have been remedied) and no event which, with the lapse of time or with the notice and lapse of time specified in said Section 17.1 would become an Event of Default thereunder shall have occurred which shall not have been remedied; and the Purchaser shall have received copies of all such documents or other evidence as it may reasonably request in order to establish the consummation of such transactions and the taking of all corporate proceedings in connection therewith, in form (as to certification and otherwise) and substance satisfactory to the Purchaser and its said special counsel.

F. The Purchaser shall have received, not less than five (5) days prior to the closing date, a complete set of "as built" plans and specifications for the Building.

G. The Purchaser shall have received a policy or policies of title insurance insuring the interest of the Purchaser in the Mortgaged Property in an aggregate amount at least equal to the principal amount of the Note purchased pursuant to paragraph 3, issued by a title company or title companies, and in form and substance, satisfactory to the Purchaser and its special counsel, covering the Mortgaged Property.

H. The Purchaser shall have received policies of insurance or certified copies thereof or certificates therefor (or other evidence satisfactory to the Purchaser that the below-mentioned insurance has been effected), satisfactory endorsed or written to reflect the Purchaser's interest, issued by insurers of recognized responsibility and in form and amount satisfactory to the Purchaser (but in no event in an amount greater than provided for in the Deed of Trust) covering the risks specified in Subsections A, B (to the extent obtainable) C, D, and E of Section 10.1 of the Deed of Trust.

I. The Consent and Agreement, in the form attached hereto as Exhibit F, shall have been duly authorized, executed and delivered to the Purchaser by the Bank.

J. All representations and warranties in paragraph 2 and in the Consent and Agreement attached as Exhibit F shall (except as affected by transactions contemplated by this Agreement) be true on the closing date with the same effect as though such representations and warranties had been made on and as of the closing date; the Company shall have performed all agreements on its part required to be performed under this Agreement and the Bank shall have performed all agreements required on its part to be performed under the Consent and Agreement on or prior to the closing date; all of the conditions under the Consent and Agreement shall have been fulfilled on or before the closing date; and the Purchaser shall have received a satisfactory certificate or certificates signed by appropriate officers of the Company and/or the Bank, as to all questions of fact involved in the conditions set forth in this Subsection.

K. At the time of the closing, there shall exist no material violations of law or municipal ordinances or orders or requirements of the State of Arkansas, or of any municipal department or other governmental authority having jurisdiction, affecting any of the Mortgaged Property, and the Mortgaged Property shall comply in all material respects with the building restrictions and zoning regulations of the City of Little Rock, Arkansas.

L. The Company shall have delivered to the Purchaser copies of the consolidated balance sheets of the Company and its consolidated subsidiaries for the fiscal years ending December 31, 1967, and December 31, 1968, and the related consolidated statements of income and surplus for such fiscal years, certified by independent certified public accountants. Said balance sheets and related statements (including any notes thereto) shall be correct and

complete and truly represent the financial condition of the Company and such subsidiaries as at the respective dates indicated and the results of the operations of the Company and such subsidiaries for the respective periods indicated, and shall have been prepared in accordance with sound accounting practice consistently maintained throughout the periods indicated. Such balance sheets and related statements shall show no material adverse changes in the financial condition of the Company from that set forth in the balance sheet of the Company as at December 31, 1966, heretofore delivered to the Purchaser and no material adverse changes affecting the operations of the Company.

M. The Purchaser shall have received, not less than five (5) days prior to the closing date, a survey by a surveyor, licensed as such in the State of Arkansas and acceptable to the Purchaser, of Tract A and Tract B, showing the location of all buildings and improvements thereon, duly certified as an accurate survey as of a date not prior to the completion of the construction of the Building and the Garage Facility and not more than twenty (20) days prior to the closing date, and showing no material encroachments, rights of way or easements on Tract A or Tract B or any material encroachments by the buildings or other improvements included in the Mortgaged on adjoining property, except such as may be approved by the Purchaser on or prior to the closing date, and showing no other state of facts which would render the title to the Mortgaged Property unmarketable.

N. The Purchaser shall have received from Messrs. House, Holmes and Jewell, who are acting as special counsel for the Purchaser in connection with this transaction, an opinion in scope and substance satisfactory to the Purchaser, as to,

(1) the due incorporation and existence of the Company and its corporate power to own property and to carry on its business as set forth in paragraph 2A;

(2) the due incorporation and existence of the Bank and its corporate power to own, lease and sublease property and to carry on its business as set forth in the Consent and Agreement;

(3) the due authorization, execution and delivery by the Company of this Agreement and the legality, validity and enforceability as against the Company of this Agreement in accordance with its terms;

(4) the due authorization, execution, and delivery of the Consent and Agreement and as to the legality, validity and enforceability of said Consent and Agreement against the Bank in accordance with its terms;

(5) the due authorization, execution and delivery of the Deed of Trust and the legality, validity and enforceability thereof in accordance with its terms and as to the creation by the Deed of Trust of the lien it purports to create upon the Mortgaged Property and the Company's interest in the Building Lease;

(6) the due authorization, execution and delivery of the Assignment and the legality, validity and enforceability thereof in accordance with its terms;

(7) the due authorization, execution and delivery and issue of the Note and the legality, validity and enforceability thereof in accordance with its terms and the availability to the holder thereof of the benefits and security afforded by the Deed of Trust and the Assignment in accordance with the terms of the Deed of Trust, the Assignment and the Note;

(8) the due authorization, execution and delivery of the Building Lease and the legality, validity and enforceability thereof in accordance with its terms;

(9) the due authorization, execution and delivery of the Ground Lease and the legality, validity and enforceability thereof in accordance with its terms;

(10) the exemption of the issuance, sale and delivery of the Note from the registration requirements of the Securities Act of 1933, as amended, and of the the Trust Indenture Act of 1939, as amended, and the Deed of Trust from the qualification requirements of availability to the Purchaser under existing laws of such exemptions in respect of any resale of the Note by the Purchaser if the Purchaser should in the future deem it expedient to sell the same;

(11) as to the adequacy of the property descriptions contained in the Deed of Trust, the Ground Lease and the Building Lease for the purpose of the Deed of Trust, the Ground Lease and the Building Lease, and the compliance of the form of the Deed of Trust, the Assignment, the Ground Lease and the Building Lease with all applicable laws of the State of Arkansas, including applicable recording laws;

(12) as to the formal approval of the Board of Governors of the Federal Reserve System to the consummation of the transactions contemplated by that certain agreement (hereinafter called the "Sales Agreement") dated as of May 1, 1968 between the Company and the Bank and of the financing and leasing transactions contemplated by this Agreement, or to the effect that no such approval is required;

(13) as to the formal approval of the Arkansas Bank Commissioner to the consummation of the transactions contemplated by the Sales Agreement and of the financing and leasing transactions contemplated by this Agreement, or as to the written ruling of said Commissioner that no such approval is required;

(14) to the effect that the Deed of Trust or notices or financing statements with respect thereto have been duly filed for record and recorded and filed in each proper office in the State of Arkansas in which the

Deed of Trust or such notices and financing statements should be filed and recorded in order to perfect and preserve the lien of the Deed of Trust on the property intended to be covered thereby, that the Assignment has been duly filed for record and recorded and filed in each proper office in the State of Arkansas in which the Assignment should be filed and recorded in order to perfect and preserve the asignment of the Building Lease as provided for in the Assignment, that the Building Lease has been duly filed for record and recorded in each proper office in said State and that all taxes, recording and filing fees and other charges required to be paid in connection therewith or in connection with the issuance of the Note have been paid, and as to the necessity of any periodic or other re-recording, refiling or filing of the Deed of Trust or notice or continuation statements with respect thereto in order to preserve and protect such lien, and as to the necessity of any periodic or other re-recording, refiling or filing of the Assignment in order to preserve and protect the assignment of the Building Lease;

(15) to the effect that upon foreclosure of the lien created by the Deed of Trust and after the expiration of the statutory period of redemption, the Building Lease and the obligations of the lessee thereunder will continue in full force and effect unaffected by such foreclosure and the Purchaser of the Mortgaged Property upon such foreclosure will become the lessor under the Building Lease and will be entitled to exercise all the rights of the lessor thereunder without the necessity of any attornment by the lessee thereunder;

(16) such other matters incident to the transactions hereby contemplated as the Purchaser may reasonably request.

O. The Purchaser shall have received from Messrs. Rose, Meek, House, Barron, Nash & Williamson, counsel for the Company, an opinion in scope and substance satisfactory to the Purchaser and its said special counsel as to all matters specified in Subsection N of this Section, except N(2), N(4), N(11) as it pertains to Trace B, N(12), and N(13).

5. *Recordation.* The Company agrees that, as soon as reasonably possible after the closing, it will, at its own expense, cause to be delivered to said special counsel for the Purchaser official evidence of the recordation and filing of the Deed of Trust and notices or financing statements with respect thereto and the Assignment, the Ground Lease and the Building Lease in the manner specified in the above-mentioned opinion of said special counsel for the Purchaser, showing that all taxes, recording fees and other charges in connection therewith have been paid and showing in reasonable detail the pertinent recordation and filing data. The Company also agrees to re-record, refile or file the Deed of Trust or notices or continuation statements or financing statements with respect thereto wherever necessary in order to preserve and protect the lien of the Deed of Trust, and to re-record, refile or file the Assignment wherever necessary in order to preserve and protect the assignment of the Building Lease as provided for in the Assignment.

6. *Financial Statements and Information.* So long as the Purchaser shall hold the Note, the Company will furnish to the Purchaser as soon as available, and in any event within 120 days after the end of each fiscal year, beginning with the fiscal year ending December 31, 1969, two copies of its balance sheet as of the end of such fiscal year, setting forth in comparative form the corresponding figures as at the end of the previous fiscal year, and two copies of its income and surplus statements for such fiscal year, setting forth in comparative form the corresponding

figures as at the end of the previous fiscal year. Such balance sheets and statements shall be prepared in reasonable detail in accordance with good accounting practice, and shall be accompanied by a report and opinion of independent certified public accountants of recognized standing selected by the Company. Such reports and opinions of such accountants shall include a statement that such accountants, in making the audit necessary for such report, have obtained no knowledge of any default by the Company in the fulfillment of any of the terms, covernants, provisions or conditions of Sections 10.1 and 20.1 of the Deed of Trust, or, if such accountants shall have obtained knowledge of any such default, they shall disclose in such statements the default or defaults and the nature thereof. Such reports of such accountants shall also include such other reports, schedules or information as may be furnished to the Company by such accountants in connection with such audit.

It is understood that the Purchaser shall be free to deliver copies of the financial statements referred to in this Section, as well as any other information or reports furnished to the Purchaser pursuant to this Agreement, to any regulatory body or commission to whose jurisdiction the Purchaser may be subject.

7. *Inspection of Properties and Books.* From the execution and delivery of this Agreement to the closing and thereafter so long as the Purchaser shall hold the aforesaid Note, the Purchaser shall have the right to visit and inspect any of the properties subject to the lien of the Deed of Trust, to examine the books of account of the Company and to discuss the affairs, finances and accounts of the Company with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Purchaser may desire.

8. *Expenses.* The Company agrees, whether or not the transactions hereby contemplated shall be consummated, to pay the fees and disbursements of Messrs. House, Holmes

and Jewell for their services to the Purchaser with relation to this Agreement, including the furnishing of the opinions referred to herein and any other transactions, to pay the reasonable expenses of any inquiry or investigation pursuant to paragraph 4D, to pay the charges and expenses in connection with the furnishing of the survey and of the title insurance pursuant to Subsections G and M of paragraph 4, and to pay all printing, filing, recording and other expenses in connection with such transactions, and to reimburse the Purchaser for any out-of-pocket expenses in connection therewith.

9. *Communications.* Except as otherwise expressly provided herein, all communications provided for herein shall be delivered or mailed addressed as follows (or at such other address as may have been furnished in writing to the parties hereto):

To the Company:
Frank Lyon Company
Attention: Mr. Ralph Cotham, Jr.,
Treasurer
6500 Scott Hamilton Drive
Little Rock, Arkansas 72206

To the Purchaser:
New York Life Insurance Company
Attention: Vice-President in Charge
of Real Estate and Mortgage
Loans,
51 Madison Avenue
New York, New York 10010

10. *Brokerage Commission.* The Company agrees to indemnify and hold the Purchaser harmless against any claim for brokerage commission or other such compensation which may be made against the Purchaser by any person, firm or corporation in connection with transactions

hereby contemplated. The Purchaser represents that it has dealt with no person, firm or corporation other than the Company and the Bank in connection therewith.

11. *Successors and Assigns.* All covenants and provisions of this Agreement by or for the benefit of the parties hereto shall bind and inure to the benefit of their respective successors and assigns.

12. *Applicable Law.* This Agreement shall be construed and enforceable in accordance with the laws of the State of Arkansas.

13. *Counterparts.* This Agreements may be executed in any number of counterparts.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed.

New York Life Insurance Company
By: /s/ Richard W. Bolen, Jr.
Vice President

Frank Lyon Company
By: /s/ C. W. Abrams
President

P. Ex. 21

BUILDING LOAN AGREEMENT

THIS AGREEMENT made this 14th day of May, 1968, between FRANK LYON COMPANY, an Arkansas corporation, having it principal office at West 65th Street and Scott Hamilton Drive, Little Rock, Arkansas (the "Borrower"), and FIRST NATIONAL CITY BANK, a national association, created and existing under the laws of the United States of America, and having a principal office at 399 Park Avenue, Borough of Manhattan, City, County and State of New York (the "Lender");

WITNESSETH:

WHEREAS, on a certain parcel of land located at Center and Capitol Streets, Little Rock, Arkansas (the "Land"), there is to be constructed a 24-story and single basement bank and office building with 6 elevators and about 217,860 square feet of net rentable space ("Worthen Building"), and a separate parking facility ("Parking Facility"); and

WHEREAS, the Borrower has made application to the Lender for a construction loan (the "Loan"), in the principal amount of $7,000,000.00 to assist in the construction of the Worthen Building; and

WHEREAS, Worthen Bank & Trust Company ("Worthen") owns the Land upon which the Worthen Building and the Parking Facility are to be built; and

WHEREAS, Worthen has agreed to sell the Worthen Building to the Borrower as construction procedes; and

WHEREAS, Worthen, as lessor, and the Borrower as lessee, have entered into a lease (the "Ground Lease"), of the land underlying the Worthen Building dated as of May 1, 1968, and recorded in the Circuit Clerk's office of Pulaski County of Arkansas; and

WHEREAS, the Borrower as lessor, and Worthen as lessee, have entered into a lease (the "Building Lease") of the Worthen Building and certain items of equipment installed therein, including a sublease of the land underlying the Worthen Building, dated as of May 1, 1968, and recorded in the Circuit Clerk's office of Pulaski County of Arkansas; and

WHEREAS, the Loan will be evidenced by a note of the Borrower (the "Note" in the form as set forth in Exhibit A hereto) in the amount of SEVEN MILLION DOLLARS ($7,000,000), and will be secured by a first mortgage in like principal amount (the "Mortgage" in the form set forth in Exhibit B hereto) on the fee title of Worthen to the Land and Parking Facility, on the fee title of the Borrower to the Worthen Building and on all right, title and interest of Borrower as lessor under the Building Lease, and as lessee under the Ground Lease (said interests being referred to herein as the "Mortgaged Property" as more fully set forth in the Mortgage); and

WHEREAS, NEW YORK LIFE INSURANCE COMPANY (the "Permanent Lender"), has agreed to purchase a Note to be issued by Borrower on completion of construction of the Worthen Building and the Parking Facility, in the amount of $7,140,000, secured by a Deed of Trust, subject to and in accordance with a certain Note Purchase Agreement of Permanent Lender with the Borrower, dated as of May 1st, 1968 (the "Note Purchase Agreement"); and

WHEREAS, the Lender has agreed to make the Loan to the Borrower as hereinafter provided, and the Borrower agrees to take said Loan and expressly covenants to comply with and perform all of the terms, covenants and conditions of this agreement and Worthen has agreed to construct the Worthen Building in accordance with plans and specifications therefor which have been approved by Lender and Permanent Lender, and the Borrower has agreed to reimburse Worthen for construction costs from

its own funds advanced in connection with the purchase of the Worthen Building.

NOW, THEREFORE, it is agreed between the parties as follows:

1. The Borrower expressly covenants to cause to be erected on the Land the Worthen Building in accordance with the construction contract dated November 8, 1967 between Matson-Bellows and Worthen and with the plans and specifications therefor which, before the making of the first advance hereunder, the Borrower agrees to file or cause to be filed with all governmental authorities having jurisdiction and to obtain or cause to be obtained all necessary approvals of said plans and specifications and all necessary building permits from said authorities. The said plans and specifications have been submitted to and approved by the Lender and Permanent Lender in writing; and no changes or admendments thereto shall be made without first obtaining the written approval of Lender and Permanent Lender.

2. The Note and Mortgage shall contain such clauses as Lender shall determine are needed for the Lender's protection and the Mortgage shall be executed and acknowledged by the Borrower as holder of the fee title to the Worthen Building and of the leasehold estate under the Ground Lease, and by Worthen as the owner of the fee title to the Land and as necessary to make it, as determined by the Lender's attorney, a valid first lien on a good and marketable title to the Mortgaged Property and on the fixtures and personal property to be covered thereby for all sums that may be advanced, free and clear of all liens, encumbrances and effects, except those, if any, to which the Lender has expressly agreed herein to take subject or which the Lender may hereafter waive.

3. The Borrower at the time of the execution of this agreement or, at the option of the Lender, at the time fixed for the delivery of the Mortgage, shall pay all fees and

charges agreed to be paid including but not necessarily limited to the fees and charges for the examination of the title to said premises, surveys, appraisals, inspections and drawing of papers, and Lender's attorney's fee and expenses and shall also pay the recording fees and mortgage recording tax.

4. Advances hereunder will be made no more frequently than once a month, based on certification of Erhart, Eichenbaumm, Rauch & Blass architects (the "architect"), as approved by Lender and Permanent Lender, certifying as to the aggregate percentage of work in place at each stage and of Cotham, Wymman & Howland, certified public accountants, as to the cost of work in place at each stage of construction, and such advances shall be equal to the total certified cost of the work in place less the total of all previous advances hereunder and the amount paid in by Borrower in connection with the construction. In no event shall advances hereunder exceed $7,000,000 in the aggregate.

5. No advance shall be due unless, in the judgment of the Lender, all work done at the stage of construction when the advance is made payable has been done in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at that time have been furnished and installed, and unless all construction be approved by the architect, but the Lender may advance parts or the whole of any installments before they become due, if the Lender believes it advisable so to do, and all such advances or payments shall be deemed to have been made in pursuance of this agreement and not to be modifications thereof. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the Lender of the work theretofore done. Any advance or installment or any part or parts thereof may be postponed or deferred by mutual consent of the Borrower and the Lender, and any such postponement or postponements shall be deemed to be in pursuance of this agreement and not in modification thereof.

6. The Lender may require five days' notice in writing from the Borrower, before an advance shall be called for. All advances are to be made at the office of the Lender or at such other place and in such manner as the Lender shall designate.

7. The Lender may at any time extend the payment of the principal secured by the Note and Mortgage, and any extensions so granted shall be deemed in pursuance of this agreement and not to be modifications thereof.

8. The Borrower shall furnish or cause to be furnished to the Lender, on or before the making of the final advance, the final certificates of approval, including certificate of occupancy, of the various governmental authorities having jurisdiction and the certificate of the Board of Fire Underwriters acting in and for the locality in which the said premises are situated.

9. The Borrower shall furnish or cause to be furnished to the Lender, or the Lender may procure at the expense of Borrower, surveys made by a surveyor satisfactory to the Lender whenever required by the Lender.

10. The Borrower shall furnish or cause to be furnished to the Lender premiums prepaid, or the Lender may procure at the expense of Borrower, the standard builders risk insurance policies in companies, forms and amounts satisfactory to Lender insuring the premises against loss or damage by fire, with the usual extended coverage endorsement, and other hazards as may reasonably be required by the Lender, and insuring the Lender as first mortgagee.

11. The Lender may at the expense of the Borrower employ a watchman to protect the building and its contents from depredation or injury.

12. If the construction of said building be at any time discontinued or not carried on with reasonable dispatch in the judgment of Lender, said Lender may purchase materials and employ workmen to protect said building so that the same will not suffer from depredation or the weather, or to complete said building so that it may be used for the purposes for which it is designed under the said plans and specifications.

13. All sums paid or expended in accordance with any of the foregoing provisions shall be deemed advanced to the Borrower and secured by the Note and Mortgage and may be applied at the option of the Lender, to any advances thereafter becoming due.

14. The Lender may deduct from any payment to be made under this agreement any amount necessary for the payment of any fees and expenses relating to the examination of the title to said premises, including cost of surveys, charges for appraisals, inspections, drawing of papers, Lender's attorney fees and expenses, mortgage recording tax, revenue stamps, if any, and architects,' engineers' and building loan service fees, and any expenses incurred in the procuring or the making of the Loan, and in the payment of any insurance premiums, mortgage tax, assessment, water rate, sewer rents and other charges, liens and encumbrances upon the said premises whether before or after the making of the Loan and any other amounts necessary for the payment of the cost of improvement and apply such amounts in making said payments, and all sums so applied shall be deemed advances under this agreement and secured by the Note and Mortgage.

15. The Borrower will not assign this contract or the moneys due thereunder or convey or encumber the property without the written consent of the Lender, but in such event the Lender may nevertheless at the option of the Lender, continue to make advances under this Agreement to the Borrower or to those who succeed to the Borrower's title; and all sums so advanced by the Lender shall be deemed advances under this agreement, and not to be modifications thereof, and shall be secured by the Note and Mortgage.

16. The Borrower represents that the Note Purchase Agreement is in full force and effect, and acknowledges that the Lender is relying upon said Note Purchase Agreement in making the Loan and hereby agrees to keep said Note Purchase Agreement in full force and effect and not to agree to any amendments thereto without the written consent of Lender.

17. The Borrower covenants and agrees not to do any act or thing prohibited by the terms of this agreement, and it is expressly agreed that in any of the following events all obligation on the part of the Lender to make said Loan or to make any further advance shall, if the Lender so elects, cease and terminate, and the Note and Mortgage shall, at the option of the Lender become immediately due and payable, but the Lender may make any advances or parts of advances after the happening of any of the following events without thereby waiving the right to demand payment of the mortgage debt and without becoming liable to make any other or further advances:

(a) If the mortgage offered by the Borrower does not give to the Lender a valid first lien on a good and marketable title to the Mortgaged Property and on the fixtures to be covered thereby for all sums that may be advanced, freee and clear of all liens, encumbrances and effects except those, if any, to which the Lender has expressly agreed to take subject or which the Lender may hereafter waive.

(b) If at the time any payment is due to the Borrower the title is not satisfactory to the Lender's attorney, regardless of whether the lien, encumbrances or other question existed at the time of any prior advance.

(c) If the Borrower assigns this contract or any of said advances or any interest therein, or if the property is conveyed or encumbered in any way without the written consent of the Lender.

(d) If a survey shows that the improvement on the Land encroaches upon the street or upon adjoining property, or any adjoining structure encroaches upon the Property to an extent deemed material by the Lender's attorney.

(e) If the Borrower does not take the Loan or the advances within thirty days after they are made payable or if the Note is not paid off in accordance with its terms.

(f) If the improvement on said premises is, in the judgment of the Lender, materially injured or destroyed by fire or otherwise.

(g) If a petition in bankruptcy is filed by or against the Borrower or Worthen or a receiver or trustee of the property of the Borrower or Worthen is appointed; or if the Borrower or Worthen files a petition for reorganization under any of the provisions of the Bankruptcy Act or of any other law, state or federal, or makes an assignment for the benefit of creditors or is adjudged insolvent by any state or federal court of competent jurisdiction, but in no case will an act of insolvency referred to herein on the part of Frank Lyon Company be an event of default hereunder, as long as Worthen assumes the debt hereunder and said assumption is proven to be legally valid to the satisfaction of Lender.

(h) If the Borrower does not make or cause to be made said improvement in accordance with plans and specifications which are previously furnished to and approved in writing by the Lender and Permanent Lender and which have been filed with and approved by all governmental authorities having jurisdiction, and in accordance with all laws, rules, regulations and requirements of such governmental authorities existing at the commencement of the improvement

and any amendments thereof and additions thereto made with the written approval of the Lender and Permanent Lender during the construction of the improvement or fails to file or cause to be filed amended or supplemental plans and specifications, if required, because of such amendments and additions after first obtaining the written approval thereof by the Lender and Permanent Lender and the approval of such governmental authorities; or if the Borrower fails to furnish or cause to be furnished the Lender with a written certificate issued by the department of the governmental authority in the locality in which the property is situated having jurisdiction thereof approving said plans and specifications and any amended and supplemented plans and specifications where such department has jurisdiction.

(i) If the owner of said premises does not permit the Lender, or representatives of the Lender to enter upon said premises and inspect the improvement thereon at all reasonable times and examine all detailed plans, shop drawings and specifications which are kept at work, or fails to furnish to them, when requested, copies of such plans, drawings and specifications.

(j) If for any cause whatever the construction of said improvement is at any time discontinued or not carried on with sufficient dispatch in the judgment of the Lender to complete construction of the Worthen Building on or before the due date for the Building Loan Mortgage Note.

(k) If the Borrower executes any chattel mortgage on any of the following materials, fixtures or articles used in the construction or operation of the improvement or appurtenant thereto, or articles of personal property placed in said premises which are purchased from Worthen Bank by the Borrower, or if any such

materials, fixtures or articles are not satisfactory to the Lender or are purchased on conditional bill of sale or otherwise so that the ownership thereof will not vest unconditionally in the Borrower, free from encumbrance, on delivery at the premises; and if the Borrower does not furnish to the Lender, if requested, the contracts, bills of sale, statements, receipted vouchers and agreements, or any of them, under which the Borrower claims title to such materials, fixtures and articles.

(l) If the Borrower fails to comply with any requirement of any governmental authority having jurisdiction within thirty days after notice in writing of such requirement shall have been given to said Borrower; or fails to furnish to the Lender, when requested, official searches made by the governmental authorities having jurisdiction.

(m) If the Borrower does not disclose or cause to be disclosed to the Lender, upon demand, the names of all persons with whom the Borrower or Worthen has contracted or intends to contract for the construction of said improvement or the furnishing of labor or materials therefor.

(n) If the Borrower permits any purchaser or prospective purchaser to occupy the premises before this agreement shall have been fully performed and the final advance made thereunder.

(o) If the Borrower fails to keep, observe or perform any of the conditions, stipulations, agreements or covenants contained in this agreement or in the Note or Mortgage.

18. And it is mutually understood and agreed by and between the parties hereto on behalf of themselves and their respective personal representatives or successors in interest that the Note and Mortgage contemplated to be

executed, acknowledged and delivered pursuant to this agreement shall be made subject to all conditions, stipulations, agreements and covenants contained in this agreement, to the same extent and effect as they would be if fully set forth in and made part of the Note and Mortgage, until this agreement is terminated by the completion of the improvement described herein and the making of the final advance hereunder as provided for herein; and it is further expressly understood and agreed that this agreement is made subject to all conditions, stipulations, agreements and convenants contained in the Note and Mortgage, to the same extent and effect as they would be if fully set forth herein and made part hereof.

This agreement may not be changed or terminated orally. Whenever the word "Lender" is used herein it shall be deemed to include also the personal representatives, successors and assigns of the Lender.

In Witness Whereof, the parties hereto have duly executed this agreement the day and year first above written.

Attest:	Frank Lyon Company
/s/ M. R. Godwin	By /s/ C. W. Abrams
	President
/s/ Frank R. Guy	First National City Bank
Assistant Cashier	By /s/ Illegible
	Vice President

(Acknowledgments Omitted in Printing)

EXHIBIT A

Building Loan Mortgage Note

$7,000,000.00 — Little Rock, Arkansas
May , 1968

For Value Received, Frank Lyon Company, an Arkansas corporation, with its principal office and place of business at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas, promises to pay to First National City Bank, a national banking association, created and existing under the laws of the United States of America, and having an office at No. 399 Park Avenue, Borough of Manhattan, City, County and State of New York, or order at 399 Park Avenue, New York, New York 10022, or at such other place as may be designated in writing by the holder of this note, the principal sum of Seven Million Dollar: ($7,000,000.00), or so much thereof as may be advanced, on the earlier of the following dates: (a) December 1, 1969, or (b) the date on which this loan will be funded by funds from the loan to be made by New York Life Insurance Company to maker herein, pursuant to its Note Purchase Agreement with Frank Lyon Company dated May 1, 1968, with interest thereon to be computed from the date of each advance at a rate equal to Lender's current best rate for commercial borrowing, said interest rate being subject to change on written notice from Lender, said change to become effective as of the first day of the month following the month in which such rate change was effected. Said interest is to be paid on the first day of June, 1968, and on the first day of each month thereafter until maturity, at which time all unpaid principal and interest shall become immediately due and payable.

It Is Hereby Expressly Agreed, that the said principal sum secured by this note shall, at the option of the holder thereof, become due on the happening of any default or

event by which, under the terms of the mortgage securing this note or of the building loan agreement mentioned in said mortgage, said principal sum may or shall become due and payable; also, that all of the covenants, conditions and agreements contained in said mortgage and building loan agreement are hereby made part of this instrument.

It Is Further Expressly Agreed, that advances are to be made here under as provided in said building loan agreement and that the indebtedness hereunder will not exceed the amount actually disbursed by First National City Bank.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

This note is secured by a mortgage made by the maker to the payee of even date herewith, on property situate at Center and Capitol Streets, Little Rock, Arkansas, as more fully described in said mortgage.

This note may not be changed or terminated orally.

Frank Lyon Company

By .....
President

(Acknowledgment Omitted in Printing)

EXHIBIT B

Building Loan Mortgage

This Mortgage, made the 14th day of May, nineteen hundred and sixty-eight, between Frank Lyon Company, an Arkansas corporation, with its principal office and place of business at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas (the "Frank Lyon Company"), and Worthen Bank & Trust Company, an Arkansas banking corporation with its principal office and place of business at Fourth and Main Streets, Little Rock, Arkansas ("Worthen") (The Frank Lyon Company and Worthen being hereinafter sometimes collectively called the "mortgagor"), and First National City Bank, a national banking association, created and existing under the laws of the United States of America, and having an office at No. 399 Park Avenue, Borough of Manhattan, City, County and State of New York (the "mortgagee").

Witnesseth, that to secure the payment of an indebtedness in the sum of Seven Million ($7,000,000.00) Dollars, lawful money of the United States or so much thereof as may be advanced, to be paid according to a certain note executed and delivered by the Frank Lyon Company to mortgagee bearing even date herewith, the Frank Lyon Company to mortgagee bearing even date herewith, the Frank Lyon Company hereby mortgages to the mortgagee the following properties (which are hereinafter sometimes collectively called the "Company Property"):

(a) all buildings, structures and other improvements now or hereafter located on certain real property hereinafter referred to as "Tract A" and described in Schedule I hereto, together with all fixtures now or hereafter attached to or located thereon (collectively, "Company Improvements"), subject to the Building Lease described below, and

(b) all right, title and interest of the Frank Lyon Company as Lessor in, to and under that certain lease dated as of May 1, 1968 (the "Building Lease"), between the Frank Lyon Company as Lessor and Worthen as Lessee covering, among other things, the Company Improvements together with rentals payable thereunder, and

(c) all right, title and interest of the Frank Lyon Company as Lessee in, to and under that certain lease dated as of May 1, 1968 (the "Ground Lease"), between Worthen as Lessor and the Frank Lyon Company as Lessee, covering Tract A.

And Worthen Hereby Mortgages to the Mortgagee the following properties (collectively, "Bank Property"):

(a) Tract A, subject to Ground Lease, and

(b) certain real property hereinafter referred to as "Tract B" and described in Schedule II hereto, together with all buildings, structures and other improvements now or hereafter located thereon (collectively, the "Parking Facility").

And Frank Lyon Company and/or Worthen covenant with the mortgagee as follows:

1. That the Frank Lyon Company will pay the indebtedness as hereinbefore provided.

2. That all awards heretofore or hereafter made to the mortgagor for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor; and to apply the same toward the payment of the mortgage debt, including interest at the rate paid by condemning authority or at the

rate payable hereunder whichever rate shall be higher; notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

3. Mortgagor will keep all buildings, improvements, fixtures and articles of personal property constituting any part of the Mortgaged Property insured against loss or damage by fire and such other risks as shall be insurable under standard forms of fire and extended coverage insurance policies, against war damage (whenever such war damage insurance shall be available and shall be required by mortgagee), and against such other hazards, casualties, contingencies and risks of loss or damage as mortgagee from time to time may require (provided that insurance against such other risks shall then be commonly carried by prudent owners of office buildings in the City of Little Rock, Arkansas), and will keep on deposit with mortgagee policies, in amounts and in form, and issued by insurers satisfactory to mortgagee, evidencing such insurance and providing that loss payable thereunder shall be paid to mortgagee as interest may appear in accordance with a standard mortgagee clause acceptable to mortgagee and made a part of each policy, and, at least ten (10) days prior to the expiration of any existing policy, will deposit with mortgagee a policy replacing such expiring policy, which new policy, to the extent that provision for payment of the premiums therefor has not hereinabove been made, shall be accompanied by evidence satisfactory to mortgagee of payment of premiums. In the even of loss or damage, mortgagor will give mortgagee immediate notice thereof in writing, and mortgagee shall have the right to make proof of loss, if not made promptly by mortgagor. At the option of mortgagee, the proceeds of loss under any

policy may be applied, either in whole or in part, after deducting all costs of collection, including reasonable attorneys' fees, in payment of the indebtedness hereby secured, whether due or not, or to the reconstruction, restoration or repair of the premises. Mortgagor's interest in all such policies is hereby assigned and transferred to mortgagee and, in the event of the transfer of title to the premises by foreclosure, power of sale or otherwise, all right, title and interest of mortgagor in and to such policies, with sole right to collect all unearned premiums thereon, shall pass to the purchaser or grantee.

4. That no building on the premises shall be altered, removed or demolished without the consent of the mortgagee other than as shown on approved plans and specifications.

5. That the whole of said principal sum and interest shall become due at the option of the mortgagee; after default in the payment of any installment for fifteen (15) days; or any tax, water rate, sewer rent or assessment for thirty (30) days after the notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided. An assessment which has been made payable in installments at the application of the Frank Lyon Company or lessee of the premises shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first installments becomes due or payable or a lien.

6. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

7. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.

8. That the Frank Lyon Company within five (5) days, upon request in person, or within ten (10) days, upon request by mail, will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.

9. That notice and demand or request may be in writing and may be served in person or by mail.

10. That at the time of the ensealing and delivery of this mortgage, mortgagor is well seized of the Mortgaged Property to the extent of the respective interests of Frank Lyon Company and Worthen hereinabove set forth and has good right, full power and lawful authority to grant, bargain, sell, convey and encumber the same in manner and form aforesaid, and that the same are free and clear of any mortgage, lien, charge or encumbrance, except easements of record, and that mortgagor will forever warrant and defend title to the Mortgaged Property against the claims and demands of all persons whomsoever.

11. That upon any foreclosure sale, the Mortgaged Property may be sold either as a whole or in parcels as mortgagee may elect and mortgagor hereby waives any right to require any such sale to be made in parcels. Upon any foreclosure sale, the fee simple and leasehold estates described herein may also be sold either as a whole or separately, as mortgagee may elect, and mortgagor hereby waiver any right to require any such sale of said estates separately.

12. That if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the mortgagee is made a party, or in which it becomes

necessary to defend or uphold the lien of this mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by Frank Lyon Company, together with interest thereon at the rate of six (6%) percent per annum, and any such sum and interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

13. That the Frank Lyon Company hereby assigns to the mortgagee the rents, issues and profits of the premises as further security for the payment of said indebtedness, and the Frank Lyon Company grants to the mortgagee the right to enter upon and take possession of the premises for the purpose of collecting the same and to let the premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this mortgage is paid. The mortgagee hereby waives the right to enter upon and take possession of said premises for the purpose of collecting said rents, issues and profits, and Frank Lyon Company shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on this mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges become due against said premises, but such right of Frank Lyon Company may be revoked by the mortgagee upon any default,

on five days' written notice. Frank Lyon Company will not, without the written consent of the mortgagee, receive or collect rent from any tenant of said premises or any part thereof for a period of more than one month in advance, and in the event of any default under this mortgage will pay monthly in advance to the mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said premises or of such part thereof as may be in the possession of Frank Lyon Company, and upon default in any such payment will vacate and surrender the possession of said premises to the mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

14. That the whole of said principal sum and the interest shall become due at the option of the mortgagee: (a) after failure to exhibit to the mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the premises within three months from the issuance thereof; or (f) if mortgagor does not furnish adequate fire insurance coverage, and if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of Arkansas refuse to issue policies insuring the buildings on the premises; or (g) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly re-

placed by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) if the mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this mortgage or of those contained in the building loan contract hereinafter mentioned.

15. This mortgage is made pursuant to a certain building loan agreement between the Frank Lyon Company and the mortgagee dated May 14, 1968, and intended to be filed in the office of the Clerk of the County of Pulaski on or before the date of the recording of this mortgage, and is subject to all the provisions of said contract as if they were fully set forth herein and made part of this mortgage.

16. That without the consent of the mortgagee, Frank Lyon Company will not, and shall not have the right or power to, cancel, abridge, terminate or otherwise modify tenancies, subtenancies, leases or subleases of the premises, and that Frank Lyon Company will not accept prepayments of instalments of rent to become due thereunder.

17. That the execution of this mortgage has been authorized by the board of directors of Frank Lyon Company and Worthen.

18. That within thirty (30) days after notice and demand, the Frank Lyon Company will deliver to the mortgagee a certified current financial statement in form satisfactory to mortgagee.

19. That there shall be no merger of the lease described herein, or of the leasehold estate created thereby, with the fee estate described therein by reason of the fact that said lease or the leasehold estate created thereby may be held by or for the account of any person or persons who shall be the owner or owners of said fee estate, unless and until all persons including mortgagee at the time having an interest in said fee estate or in said lease shall join in

a written instrument declaring a contrary intent and shall duly record the same.

20. Pursuant to Section 33.2 of the lease of the Mortgaged Property between Frank Lyon Company as Lessor and Worthen as Lessee Worthen joins herein for the sole purpose of subjecting and binding all of its title, right, interest and estate in and to the Mortgaged Property to the full and faithful performance and observance of all of the terms, covenants and conditions of this mortgage. Nothing contained herein or in the note hereby secured shall be construed as obligating Worthen to pay any sums required to be paid hereunder or thereunder. Mortgagee, by accepting this mortgage, specifically concurs in the statements contained in this paragraph.

This mortgage may not be changed or terminated orally. The covenants contained in this mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and assigns of the mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this mortgage. The word "mortgagor" shall be construed as if it read "mortgagors" and the word "mortgagee" shall be construed as if it read "mortgagees" whenever the sense of this mortgage so requires.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

ATTEST:

FRANK LYON COMPANY

..... By .....
President

WORTHEN BANK & TRUST COMPANY

..... By .....
President

(Acknowledgments Omitted in Printing)

SCHEDULE I

The land (Tract A) referred to in the Mortgaging Clause applicable to Frank Lyon Company of the Mortgage dated as of May 14, 1968, between Worthen Bank & Trust Company and Frank Lyon Company as Mortgagors and First National City Bank as Mortgagee, to which this Schedule I is attached, consists of a parcel in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

BEGINNING at the Southwest corner of Lot 6, Block 84, Original City of Little Rock; thence northerly 160.33 feet along the West side of Lots 6, 5, 4 and 3 to a point 139.67 feet South of the Northwest corner of said Block 84; thence easterly 140.0 feet to a point on the East side of Lot 3, located 139.67 feet South of the Northeast corner of Lot 1; thence 43.88 feet in a southerly direction along the East side of Lots 3 and 4; thence easterly 160.0 feet to a point on the East side of Lot 9, located 116.45 feet North of the Southeast corner of Lot 7; thence southerly 116.45 feet along the East side of Lots 9, 8 and 7 to the Southeast corner of Lots 7; thence westerly 300.0 feet along the South side of Lots 7 and 6 to the point of beginning;

SUBJECT, however, to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of The City of Little Rock, Arkansas, to Worthen Bank & Trust Company;

FURTHER SUBJECT to liens for unpaid taxes and assessments and to unfiled mechanics' and materialmens' liens;

LESS AND EXCEPT—

(a) the air space above the North 29.33 feet of Tract A beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

SCHEDULE II

The land (Tract B) referred to in the Mortgaging Clause applicable to Worthen Bank & Trust Company of the Mortgage dated as of May 14, 1968, between Frank Lyon Company and Worthen Bank & Trust Company as Mortgagors and First National City Bank as Mortgagee, to which this Schedule II is attached, consists of a parcel of land in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

BEGINNING at the Northwest corner of Lot 1, Block 84, Original City of Little Rock; thence easterly 140.0 feet along the North side of Lot 1 to the Northeast corner of Lot 1; thence southerly 139.67 feet along the East side of Lots 1, 2, and 3; thence westerly 140.0 feet to

a point on the West side of Lot 3, located 139.67 feet South of the Northwest corner of Lot 1, thence northerly 139.67 feet along the west side of Lots 3, 2 and 1 to the point of beginning;

SUBJECT HOWEVER, To a perpetual surface easement for use by the public as a passageway, described in an Agreement between Worthen Bank & Trust Company and Union National Bank of Little Rock, Trustee and Charles M. Taylor, Trustee, dated April 14, 1967, and recorded July 5, 1967, in Book 1001 at Pages 187-194, inclusive, of the records of the Circuit Clerk of Pulaski County, Arkansas, and further described in an Agreement dated July 26, 1967, filed for record August 2, 1967, and recorded in Book 1004 at Page 515 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by and between Worthen Bank & Trust Company and Union National Bank of Little Rock and William L. Terry, as Co-Trustees under "The Terry Trust," and Adolphine Fletcher Terry, said easement covering the north 20 feet of the South 25.17 feet of Tract B plus the turning radius described in said Agreement.

FURTHER SUBJECT to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of City of Little Rock, Arkansas, to Worthen Bank & Trust Company.

FURTHER SUBJECT to liens for unpaid taxes and assessments and to unfiled merchanics' and materialmens' liens.

TOGETHER WITH—

(a) the air space above the North 29.33 feet of Tract A (described in Schedule I hereof) beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

P. Ex. 22

BUILDING LOAN MORTGAGE NOTE

$7,000,000.00 — Little Rock, Arkansas
May 14, 1968

FOR VALUE RECEIVED, FRANK LYON COMPANY, an Arkansas corporation, with its principal office and place of business at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas, promises to pay to FIRST NATIONAL CITY BANK, a national banking association, created and existing under the laws of the United States of America, and having an office at No. 399 Park Avenue, Borough of Manhattan, City, County and State of New York, or order at 399 Park Avenue, New York, New York 10022, or at such other place as may be designated in writing by the holder of this note, the principal sum of SEVEN MILLION DOLLARS ($7,000,000.00), or so much thereof as may be advanced, on the earlier of the following dates: (a) December 1, 1969, or (b) the date on which this loan will be funded by funds from the loan to be made by New York Life Insurance Company to maker herein, pursuant to its Note Purchase Agreement with Frank Lyon Company dated as of May 1, with interest thereon to be computed from the date of each advance at a rate equal to Lender's current best rate for commercial borrowing, said interest rate being subject to change on written notice from Lender, said change to become effective as of the first day of the month following the month in which such rate change was effected. Said interest is to be paid on the first day of June, 1968, and on the first day of each month thereafter until maturity, at which time all unpaid principal and interest shall become immediately due and payable.

IT IS HEREBY EXPRESSLY AGREED, that the said principal sum secured by this note shall, at the option of the holder thereof, become due on the happening of any default or event by which, under the terms of the mortgage securing this note or of the building loan agreement mentioned in

said mortgage, said principal sum may or shall become due and payable; also, that all of the covenants, conditions and agreements contained in said mortgage and building loan agreement are hereby made part of this instrument.

IT IS FURTHER EXPRESSLY AGREED, that advances are to be made hereunder as provided in said building loan agreement and that the indebtedness hereunder will not exceed the amount actually disbursed by First National City Bank.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

This note is secured by a mortgage made by the maker to the payee of even date herewith, on property situate at Center and Capitol Streets, Little Rock, Arkansas, as more fully described in said mortgage.

This note may not be changed or terminated orally.

FRANK LYON COMPANY

By /s/ C. W. ABRAM
President

(Acknowledgment Omitted in Printing)

P. Ex. 23

No. 31348 Filed For Record May 14, 1968, at 3:05 o'clock p.m. (SEAL) and recorded May 15, 1968. ROGER MCNAIR, CLERK.

BUILDING LOAN MORTGAGE

THIS MORTGAGE, made the 14th day of May, nineteen hundred and sixty-eight, between FRANK LYON COMPANY, an Arkansas corporation, with its principal office and place of business at West Sixty-fifth Street and Scott Hamilton Drive, Little Rock, Arkansas (the "Frank Lyon Company"), and WORTHEN BANK & TRUST COMPANY, an Arkansas banking corporation with its principal office and place of business at Fourth and Main Streets, Little Rock, Arkansas ("Worthen") (The Frank Lyon Company and Worthen being hereinafter sometimes collectively called the "mortgagor"), and FIRST NATIONAL CITY BANK, a national banking association, created and existing under the laws of the United States of America, and having an office at No. 399 Park Avenue, Borough of Manhattan, City, County and State of New York (the "mortgagee").

WITNESSETH, that to secure the payment of an indebtedness in the sum of SEVEN MILLION ($7,000,000.00) DOLLARS, lawful money of the United States or so much thereof as may be advanced, to be paid according to a certain note executed and delivered by the Frank Lyon Company to mortgagee bearing even date herewith, the Frank Lyon Company hereby mortgages to the mortgagee the following properties (which are hereinafter sometimes collectively called the "Company Property"):

(a) all buildings, structures and other improvements now or hereafter located on certain real property hereinafter referred to as "Tract A" and described in Schedule I hereto, together with all fixtures now or hereafter attached to or located thereon

(collectively, "Company Improvements"), subject to the Building Lease described below, and

This instrument prepared by:

Wright, Lindsay and Jennings
Attorneys at Law
Little Rock, Arkansas.

(b) all right, title and interest of the Frank Lyon Company as Lessor in, to and under that certain lease dated as of May 1, 1968 (the "Building Lease"), between the Frank Lyon Company as Lessor and Worthen as Lessee covering, among other things, the Company Improvements together with rentals payable thereunder, and

(c) all right, title and interest of the Frank Lyon Company as Lessee in, to and under that certain lease dated as of May 1, 1968 (the "Ground Lease"), between Worthen as Lessor and the Frank Lyon Company as Lessee, covering Tract A.

AND WORTHEN HEREBY MORTGAGES TO THE MORTGAGEE the following properties (collectively, "Bank Property"):

(a) Tract A, subject to the Ground Lease, and

(b) certain real property hereinafter referred to as "Tract B" and described in Schedule II hereto, together with all buildings, structures and other improvements now or hereafter located thereon (collectively, the "Parking Facility").

AND Frank Lyon Company and/or Worthen covenant with the mortgagee as follows:

1. That the Frank Lyon Company will pay the indebtedness as hereinbefore provided.

2. That all awards heretofore or hereafter made to the mortgagor for taking by eminent domain the whole or any

part of said premises or any easement therein, including any awards for changes of grade of streets are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, including interest at the rate paid by condemning authority or at the rate payable hereunder whichever rate shall be higher, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

3. Mortgagor will keep all buildings, improvements, fixtures and articles of personal property constituting any part of the Mortgaged Property insured against loss or damage by fire and such other risks as shall be insurable under standard forms of fire and extended coverage insurance policies, against war damage (whenever such war damage insurance shall be available and shall be required by mortgagee), and against such other hazards, casualties, contingencies and risks of loss or damage as mortgagee from time to time may require (provide that insurance against such other risks shall then be commonly carried by prudent owners of office buildings in the City of Little Rock, Arkansas), and will keep on deposit with mortgagee policies, in amounts and in form, and issued by insurers satisfactory to mortgagee, evidencing such insurance and providing that loss payable thereunder shall be paid to mortgagee as interest may appear in acordance with a standard mortgage clause acceptable to mortgagee and made a part of each policy, and, at least ten (10) days prior to the expiration of any existing policy, will deposit with mortgagee a policy replacing such expiring policy, which new policy, to the extent that provision for payment

of the premiums therefor has not hereinabove been made, shall be accompanied by evidence satisfactory to mortgagee of payment of premiums. In the event of loss or damage, mortgagor will give mortgagee immediate notice thereof in writing, and mortgagee shall have the right to make proof of loss, if not made promptly by mortgagor. At the option of mortgagee, the proceeds of loss under any policy may be applied, either in whole or in part, after deducting all costs of collection, including reasonable attorneys' fees, in payment of the indebtedness hereby secured, whether due or not, or to the reconstruction, restoration or repair of the premises. Mortgagor's interest in all such policies is hereby assigned and transferred to mortgagee and, in the event of the transfer of title to the premises by foreclosure, power of sale or otherwise, all right, title and interest of mortgagor in and to such policies, with sole right to collect all unearned premiums thereon, shall pass to the purchaser or grantee.

4. That no building on the premises shall be altered, removed or demolished without the consent of the mortgagee other than as shown on approved plans and specifications.

5. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any instalment of interest for fifteen (15) days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty (30) days after the notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided. An assessment which has been made payable in instalments at the application of the Frank Lyon Company or lessee of

the premises shall nevertheless, for the purposes of this paragraph, be deemed due and payable in its entirety on the day the first instalments become due or payable or a lien.

6. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

7. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.

8. That the Frank Lyon Company within five (5) days, upon request in person, or within ten (10) days, upon request by mail, will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.

9. That notice and demand or request may be in writing and may be served in person or by mail.

10. That at the time of the ensealing and delivery of this mortgage, mortgagor is well seized of the Mortgaged Property to the extent of the respective interests of Frank Lyon Company and Worthen hereinabove set forth and has good right, full power and lawful authority to grant, bargain, sell, convey and encumber the same in manner and form aforesaid, and that the same are free and clear of any mortgage, lien, charge or encumbrance, except easements of record, and that mortgagor will forever warrant and defend title to the Mortgaged Property against the claims and demands of all persons whomsoever.

11. That upon any foreclosure sale, the Mortgaged Property may be sold either as a whole or in parcels as mortgagee may elect and mortgagor hereby waives any right to

require any such sale to be made in parcels. Upon any foreclosure sale, the fee simple and leasehold estates described herein may also be sold either as a whole or separately, as mortgagee may elect, and mortgagor hereby waives any right to require any such sale of said estates separately.

12. That if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by Frank Lyon Company, together with interest thereon at the rate of six (6%) percent per annum, and any such sum and interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

13. That the Frank Lyon Company hereby assigns to the mortgagee the rents, issues and profits of the premises as further security for the payment of said indebtedness, and the Frank Lyon Company grants to the mortgagee the right to enter upon and take possession of the premises for the purposes of collecting the same and to let the premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this mortgage is paid. The mortgagee hereby waives the right to enter upon and take possession of said premises for the purpose of

collecting said rents, issues, and profits, and Frank Lyon Company shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this mortgage, and agrees to use such rents, issues and profits in payments of principal and interest becoming due on this mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges become due against said premises, but such right of Frank Lyon Company may be revoked by the mortgagee upon any default, on five days' written notice. Frank Lyon Company will not, without the written consent of the mortgagee, receive or collect rent from any tenants of said premises or any part thereof for a period of more than one month in advance, and in the event of any default under this mortgage will pay monthly in advance to the mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said premises or of such part thereof as may be in the possession of Frank Lyon Company, and upon default in any such payment will vacate and surrender the possession of said premises to the mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

14. That the whole of said principal sum and the interest shall become due at the option of the mortgagee: (a) after failure to exhibit to the mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over

the premises within three months from the issuance thereof; or (f) if mortgagor does not furnish adequate fire insurance coverage, and if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of Arkansas refuse to issue policies insuring the buildings on the premises; or (g) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) if the mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this mortgage or of those contained in the building loan contract hereinafter mentioned.

15. This mortgage is made pursuant to a certain building loan agreement between the Frank Lyon Company and the mortgagee dated May 1968, and intended to be filed in the office of the Clerk of the County of Pulaski on or before the date of the recording of this mortgage, and is subject to all the provisions of said contract as if they were fully set forth herein and made part of this mortgage.

16. That without the consent of the mortgagee, Frank Lyon Company will not, and shall not have the right or power to, cancel, abridge, terminate or otherwise modify tenancies, subtenancies, leases or subleases of the premises, and that Frank Lyon Company will not accept prepayments of installments of rent to become due thereunder.

17. That the execution of this mortgage has been authorized by the board of directors of Frank Lyon Company and Worthen.

18. That within thirty (30) days after notice and demand, the Frank Lyon Company will deliver to the mort-

gagee a certified current financial statement in form satisfactory to mortgagee.

19. That there shall be no merger of the lease described herein, or of the leasehold estate created thereby, with the fee estate described therein by reason of the fact that said lease or the leasehold estate created thereby may be held by or for the account of any person or persons who shall be the owner or owners of said fee estate, unless and until all persons including mortgagee at the time having an interest in said fee estate or in said lease shall join in a written instrument declaring a contrary intent and shall duly record the same.

20. Pursuant to Section 33.2 of the lease of the Mortgaged Property between Frank Lyon Company as Lessor and Worthen as Lessee Worthen joins herein for the sole purpose of subjecting and binding all of its title, right, interest and estate in and to the Mortgaged Property to the full and faithful performance and observance of all of the terms, covenants and conditions of this mortgage. Nothing contained herein or in the note hereby secured shall be construed as obligating Worthen to pay any sums required to be paid hereunder or thereunder. Mortgagee, by accepting this mortgage, specifically concurs in the statements contained in this paragraph.

This mortgage may not be changed or terminated orally. The covenants contained in this mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and assigns of the mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of the premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this mortgage. The word "mortgagor" shall be construed as if it read "mortgagors" and the word "mortgagee" shall be construed as if it read "mortgagees' whenever the sense of this mortgage so requires.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

ATTEST:

/s/ M. R. GODWIN

FRANK LYON COMPANY

By /s/ C. W. ABRAMS
President

WORTHEN BANK & TRUST

/s/ BOOKER WORTHEN

By /s/ EDWARD M. PENICK
President

(Acknowledgments Omitted in Printing)

SCHEDULE I

The land (Tract A) referred to in the Mortgaging Clause applicable to Frank Lyon Company of the Mortgage dated as of May 14, 1968, between Worthen Bank & Trust Company and Frank Lyon Company as Mortgagors and First National City Bank as Mortgagee, to which this Schedule I is attached, consists of a parcel in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

> BEGINNING at the Southwest corner of Lot 6, Block 84, Original City of Little Rock; thence northerly 160.33 feet along the West side of Lots 6, 5, 4 and 3 to a point 139.67 feet South of the Northwest corner of said Block 84; thence easterly 140.0 feet to a point on the East side of Lot 3, located 139.67 feet South of the Northeast corner of Lot 1; thence 43.88 feet in a southerly direction along the East side of Lots 3 and 4; thence easterly 160.0 feet to a point on the East side of Lot 9, located 116.45 feet North of the Southeast corner of Lot 7; thence southerly 116.45 feet along the East side of Lots 9, 8 and 7 to the Southeast corner of Lot 7; thence westerly 300.0 feet along the South side of Lots 7 and 6 to the point of beginning;

BEST COPY AVAILABLE

SUBJECT, however, to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of The City of Little Rock, Arkansas, to Worthen Bank & Trust Company;

FURTHER SUBJECT to liens for unpaid taxes and assessments and to unfiled mechanics' and materialmens' liens;

LESS AND EXCEPT—

(a) the air space above the North 29.33 feet of Tract A beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

SCHEDULE II

The land (Tract B) referred to in the Mortgaging Clause applicable to Worthen Bank & Trust Company of the Mortgage dated as of May 14, 1968, between Frank Lyon Company and Worthen Bank & Trust Company as Mortgagors and First National City Bank as Mortgagee, to which this Schedule II is attached, consists of a parcel of land in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

BEGINNING at the Northwest corner of Lot 1, Block 84, Original City of Little Rock; thence easterly 140.0 feet along the North side of Lot 1 to the Northeast corner of Lot 1; thence southerly 139.67 feet along the East side of Lots 1, 2, and 3; thence westerly 140.0 feet to a point on the West side of Lot 3, located 139.67 feet South of the Northwest corner of Lot 1, thence northerly 139.67 feet along the west side of Lots 3, 2 and 1 to the point of beginning;

SUBJECT HOWEVER, To a perpetual surface easement for use by the public as a pasageway, described in an Agreement between Worthen Bank & Trust Company and Union National Bank of Little Rock, Trustee and Charles M. Taylor, Trustee, dated April 14, 1967, and recorded July 5, 1967, in Book 1001 at Pages 187-194, inclusive, of the records of the Circuit Clerk of Pulaski County, Arkansas, and further described in an Agreement dated July 26, 1967, filed for record August 2, 1967, and recorded in Book 1004 at Page 515 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by and between Worthen Bank & Trust Company and Union National Bank of Little Rock and William L. Terry, as Co-Trustees under "The Terry Trust," and Adolphine Fletcher Terry, said easement covering the north 20 feet of the South 25.17 feet of Tract B plus the turning radius described in said Agreement.

FURTHER SUBJECT to certain restrictions, conditions and reservations contained in a Special Warrant Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of City of Little Rock, Arkansas, to Worthen Bank & Trust Company.

FURTHER SUBJECT to liens for unpaid taxes and assessments and to unfiled mechanics' and materialmen's liens.

TOGETHER WITH—

(a) the air space above the North 29.33 feet of Tract A (described in Schedule I hereof) beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company, (or its assignee) against any loss or damage caused by the use of this easement.

No. 31348 Filed for Record May 14, 1968, at 3:05 P.M., and Recorded May 15, 1968. (SEAL) ROGER MCNAIR, CIRCUIT CLERK.

P. Ex. 24

No. 31349 Filed for Record May 14, 1968, at 3:06 o'clock P.M. (SEAL) and recorded May 15, 1968. ROGER MCNAIR, CLERK.

Book 1213 page 347

ASSIGNMENT

This Assignment, dated as of May 14, 1968, is made by Frank Lyon Company, an Arkansas corporation (hereafter called the "Assignor"), having its principal office at West 65th Street and Scott Hamilton Drive, Little Rock, Arkansas, to First National City Bank, a national banking association, created and existing under the laws of the United States of America, and having an office at No. 399 Park Avenue, Borough of Manhattan, City, County and State of New York (hereafter called the "Assignee").

For value received, the Assignor hereby grants, transfers and assigns to Assignee, its successors and assigns, all of the right, title and interest of the Assignor as Lessor in, to and under that certain lease dated as of May 1, 1968 (the "Building Lease"), between the Assignor as Lessor and Worthen Bank & Trust Company of Little Rock, Arkansas, as Lessee, covering among other things (i) all buildings, structures and other improvements now or hereafter located on certain real property referred to therein as Tract A and described in Schedule I thereto, together with all fixtures thereon, and (ii) the interest of the Assignor as Lessee in, to and under that certain lease dated as of May 1, 1968 (the "Ground Lease"), between Worthen Bank & Trust Company as Lessor and the Assignor as Lessee, covering Tract A described in Schedule I thereto, together with all fixtures thereon, and (ii) the interest of the Assignor as Lessee in, to and under that certain lease dated as of May 1, 1968 (the "Ground Lease"), between Worthen Bank & Trust Company as Lessor and the Assignor as Lessee, covering Tract A described in said lease.

The foregoing Assignment is for the purpose of securing (a) payment of all sums now or at any time hereafter due to the Assignee and secured by a certain mortgage dated as of May 14 1968 (hereinafter called the "Mortgage"), executed by the Assignor and Worthen Bank & Trust Company to the Assignee as mortgagee and to be recorded immediately after the recording of this Assignment, and (b) performance and discharge of each obligation, covenant and agreement of the Assignor contained herein or in the Mortgage or the secured promissory note referred to in and secured by the Mortgage.

The Assignee agrees that upon the payment in full of all indebtedness secured herby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Mortgage, this Assignment shall become and be void and of no effect.

The Assignor agrees that:

1. The Assignor will:

(a) perform or cause to be performed all of the terms, covenants and conditions on its part to be performed under the Building Lease and the Ground Lease;

(b) promptly notify the Assignee in writing of the occurrance of any default, of which the Assignor has knowledge, in the observance or performance of any of the terms, covenants and conditions to be performed under the Building Lease, or the Ground Lease, and the giving of any notice of default under such lease;

(c) whenever requested by the Assignee, at the sole cost and expense of the Assignor, take all such action as may be so requested to enforce or secure the performance of any term, covenant or condition of the Building Lease, or the Ground Lease, and to exercise any right of the Assignor under said leases;

(d) not terminate (except as permitted pursuant to Article XX of the Building Lease), modify or accept a surrender of, or offer or permit any termination (except as permitted pursuant to Article XX of the Building Lease), modification or surrender of, the Building Lease, or the Ground Lease, unless the Assignee consents in writing thereto.

2. The rights assigned hereunder include all the Assignor's right and power to modify the Building Lease or the Ground Lease or to terminate (except as permitted pursuant to Article XX of the Building Lease) or accept a surrender of said lease or to waive or release any person from the performance or observance of any obligation or condition thereof.

3. If the Assignor shall fail to perform any of its coveants in this Assignment, the Assignee may at any time and from time to time at its discretion make advances to effect performance of any such covenant on behalf of the Assignor; and all such moneys advanced by the Assignee, together with interest at the rate of ten percent (10%) per annum, shall be repaid by the Assignor upon demand and shall be secured hereby and by the Mortgage, but no such advance shall relieve the Assignor from defaults hereunder.

4. The Assignee may, to the extent permitted by law, in case one or more of the Events of Default described in the Mortgage shall happen and shall not have been remedied, enter into and upon all or any part of the premises covered under the Building Lease or the Ground Lease and may exclude the Assignor and all persons claiming under the Assignor, wholly or partly therefrom; and holding the same, the Assignee may use, operate, manage and control said premises and conduct the business thereof, and exercise all rights and powers of the Assignor, including all the rights, powers and remedies conferred upon or reserved to the Assignor by the Building Lease or the

Ground Lease, either in the name of the Assignor or otherwise, as the Assignee shall deem best. Upon every such entry and to the extent permitted by law without such entry, the Assignee may collect the rents, profits, revenues and other income payable under the Building Lease and apply the same after payment of all necessary charges and expenses to the payment of all sums secured hereby.

5. The Assignee shall not be obligated to perform or discharge any obligation under either the Building Lease or the Ground Lease, or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Assignee against and hold it harmless from any and all liability, loss or damage which it may or might incur under either of said leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of said leases. If the Assignee should incur any such liability, loss or damage under either of said leases or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof including costs, expenses and reasonable attorneys' fees, together with interest thereon at ten percent (10%) per annum, shall be secured hereby, and the Assignor shall reimburse the Assignee therefor immediately upon demand.

6. This Assignment shall inure to the benefit of the successors and assigns of the Assignee and bind and inure to the benefit of the successors and assigns of the Assignor.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed, all as of the day and year first above written.

FRANK LYON COMPANY

By .....
President

Attest:

M. R. GODWIN
Secretary

(Acknowledgment Omitted in Printing)

No. 31349 Filed for Record May 14, 1968, at 3:06 P.M., and Recorded May 15, 1968. (SEAL) ROGER MCNAIR, CIRCUIT CLERK.

P. Ex. 25

SALES AGREEMENT

THIS SALES AGREEMENT executed on this 19th day of May, 1968 by and between the FRANK LYON COMPANY, a corporation organized under the laws of the State of Arkansas (hereinafter referred to as "the Company") and WORTHEN BANK & TRUST COMPANY, a banking association organized under the laws of the State of Arkansas (hereinafter referred to as "the Bank");

W-I-T-N-E-S-S-E-T-H

WHEREAS, the Bank has purchased certain real property located in Little Rock, Arkansas (hereinafter referred to as as "Track A") and has let and demised Tract A to the Company under a lease agreement (hereinafter referred to as the "Ground Lease"); and

WHEREAS, the Bank has entered into a contract (hereinafter referred to as the "Construction Contract") for the construction of a twenty-four (24) story building (hereinafter referred to as the "Bank Building") on Tract A, and a parking garage on an adjacent tract; and

WHEREAS, legal restrictions with respect to the ownership of real estate by a bank will not permit the Bank to own both the Bank Building and the aforesaid parking garage; and

WHEREAS, the Company and its affiliates own improved real estate in Arkansas and elsewhere and the Company is desirous of making a further investment in real estate through the purchase of the Bank Building; and

WHEREAS, the Company has entered into an agreement (hereinafter referred to as the "Building Loan Agreement") with First National City Bank, New York, New York, for the financing of the construction of the Bank Building; and

WHEREAS, the Company has entered into an agreement (hereinafter referred to as the "Note Purchase Agreement") with New York Life Insurance Company for the permanent financing of the purchase of the Bank Building; and

WHEREAS, the Company has let and demised the Bank Building and its interest in the Ground Lease to the Bank under a lease agreement (hereinafter referred to as the "Building Lease"); and

WHEREAS, said Ground Lease, Construction Contract, Building Loan Agreement, Note Purchase Agreement, Building Lease, and all of the exhibits to each of the aforesaid agreements are attached hereto as EXHIBITS "A", "B", "C", "D", and "E", respectively, are hereinafter collectively referred to as "Exhibits", and are incorporated herein as though set forth in full.

NOW, THEREFORE, subject to the following terms and conditions the parties hereto agree as follows:

1. *Representations and Warranties.* The Bank represents and warrants as follows:

(a) The Bank is a banking corporation duly incorporated and validly existing under the laws of the State of Arkansas and is in good standing in said State.

(b) There are no material actions, suits or proceedings pending or to the knowledge of the Bank threatened against or affecting the Bank or its property, at law or in equity or before or by any Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, except actions, suits or proceedings of the character normally incident to the kind of business conducted by the Bank which, if adversely determined, would not materially impair the Bank's right to carry on its business substantially as now con-

ducted or proposed to be conducted; and the Bank is not in default with respect to any material order, writ, injunction, decree or demand of any court or Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

(c) The consummation of the transactions contemplated by this Sales Agreement and Exhibits will not result in the breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument to which the Bank is a party or by which the Bank or its properties may be bound or affected.

(d) The Bank is duly authorized to enter into this Sales Agreement and any of the Exhibits to which it is a party.

(e) The Bank has good clear record and marketable title in fee simple absolute to Tract A, free and clear of all liens, charges, and encumbrances, except: (1) the interest of the Company as Lessee under the Ground Lease; (2) the interest of First National City Bank, New York, New York, under the Building Loan Mortgage which is an Exhibit to the Building Loan Agreement; and (3) inchoate unfiled mechanics or materialmen's liens.

(f) The Construction Contract is a valid, legal, enforceable and existing contract with Matson-Bellows for the construction of a twenty-four (24) story and single basement bank and office building, with six (6) elevators and about 217,860 square feet of net rentable space, and the Bank is not in default with respect to it.

(g) The construction of the Bank Building will be fully completed by the Closing Date (as defined in paragraph 7 hereof) in accordance with the Construction Contract, free from all liens and claims which may

be filed or made for performing work and labor thereon or furnishing materials therefor, or both, and that the total cost of such construction will be at least $7,640,000.00.

(h) That is has received the valid approval of the Board of Governors of the Federal Reserve System and of the Bank Commissioner of the State of Arkansas for the consummation of the transactions contemplated by this Sales Agreement, and Exhibits to the extent that such approval is required.

(i) All representations and warranties by the Bank herein and any certificates delivered pursuant hereto shall survive the execution of this Sales Agreement, and the consummation of all the transactions provided for in this Sales Agreement and shall be deemed to be relied upon by the Company notwithstanding any inquiry or investigation which the Company may make in respect to the truth or accuracy of such representations and warranties.

2. *Sale of the Bank Building.* Subject to the terms of this Sales Agreement, the Company hereby agrees to purchase from the Bank, and the Bank agrees to sell to the Company the Bank Building (as that term is defined in paragraph 2(a) hereof) but not Tract A, for the consideration (the "purchase price") provided in paragraph 2(b) hereof. Title to the materials shall pass to the Company as the materials are incorporated into the Bank Building.

(a) For the purpose hereof "the Bank Building" shall mean the twenty-four (24) story building located on Tract A, including all machinery and fixtures of every kind and nature whatsoever which may be used or procurred in connection with the operation and maintenance of the Building which shall include, but not be limited to, engines, motors, generators, dynamos, pumps, furnaces, boilers, incinerators, oil burn-

ers, radiators and piping, stokers, heaters, tanks and heating equipment, wiring and electrical equipment, gas, electric, lighting, heating, plumbing and bathroom fixtures, including pipes and conduits, elevators, escalators and lifting apparatus, refrigerating, air cooling, air conditioning, ventilating and sprinkling apparatus, partitions, built-in kitchen and restaurant equipment, plants and shrubbery and well-to-wall carpeting and all other equipment and furnishings used or procurred for use in connection with the operation and maintenance of the Building, together with all replacements thereof and additions thereto but specifically excluding safety deposit boxes, vault doors, banking trade fixtures, furniture, china, glassware, silverware and such other personalty as may, from time to time, be listed on the Schedule of Bank Personalty which is attached hereto.

(b) In consideration for the sale of the Bank Build- to the Company, the Company shall pay to the Bank as the purchase price an amount to be determined and paid as hereinafter provided: (1) The Company shall pay in a series of periodic installments which will be be made not more frequently than once a month, based upon the certification of COTHAM, WYLAND & HOWLAND, Certified Public Accountants, certifying as to the cost of work in place at each stage of construction and the certification of ERHARD, EICHENBAUM, RAUCH & BLASS, Architects, certifying as to the aggregate percentage of work in place in each stage in an amount sufficient to imburse the Bank for its expenditures, in constructing the Bank Building. The Company may require seven (7) days notice in writing from the Bank before an advance shall be called for. All advances are to be made at the office of the Company or at such other place or in such manner as the Company shall designate. At the time of the request for an advance the Bank shall furnish to the Company the following:

a a certificate of the architect or engineer in charge of construction dated not more than thirty (30) days prior to such request setting forth that the sum then requested either has been paid by the Bank and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered services or furnished materials for the construction of the Bank Building and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid and/or due to each said persons in respect thereof, also stating the fair value of such construction at the time of acquisition thereof; and that, except for the amounts, if any, stated in the certificate to be due for services or materials, there is no indebtedness known, after due inquiry to said architects, or engineers which is then due and payable for labor, wages, services, materials or supplies in connection with said construction, which, after unpaid, might become the basis of a Vendors', Mechanics', Laborers', Materialmens', Statutory or other similar lien upon the Bank Building or any part thereof; and

b an affidavit sworn to be an Exeecutive Office of the Bank not more than thirty (30) days prior to the application for such withdrawals setting forth in substance that all materials and all properties used in the construction described in said certificate, pursuant to the foregoing subsection *a* of this section and every part thereof are free and clear of all encumbrances, except those created by the Company, and undetermined or inchoate liens or charges for indebtedness incidental to such constructions, and which have not been filed pursuant to the laws, and except encumbrances, if any, securing an indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said

certificate pursuant to the foregoing subsection *a* of this section which encumbrance shall be discharged upon payment of such indebtedness; and that no part of the several amounts paid and/or due as stated in said certificate pursuant to the foregoing subsection *a* of this section has been or is being made the basis of a request for payment in any previous or then pending application; and that there is no default by the Company under the Construction Contract.

(2) All of the reimbursements by the Company to the Bank as herein provided shall not, in the aggregate exceed $7,640,000.00, less an amount (hereinafter referred to as the "Company Cost") equal to the sum of (i) any direct expenses of the type referred to in Section 6, and (ii) interim interest on the construction loan which is paid by the Company.

(3) No advance shall be due unless, in the judgment of the Company, all work done at the stage of construction which the advance is made payable has been done in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at that time have been furnished and installed, and unless all construction be approved by the architect, but the Company may advance parts or the whole of any installments before they become due, if the Company believes it advisable so to do, and all such advances or payments shall be deemed to have been made in pursuance of this Agreement and not to be modifications thereof. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the Company of the work theretofore done. Any advance or installment or any part or parts thereof may be postponed or deferred by mutual consent of the Bank and the Company, and any such postponement or postponements shall be deemed to be in pursuance of this Agreement and not in modification thereof.

3. *Covenants.* The Bank hereby covenants and agrees as follows:

(a) The Bank expressly covenants to cause to be erected on Tract A the Worthen Building in accordance with the Construction Contract dated November 8, 1967 between Matson-Bellows and Worthen and with the plans and specifications therefor which the Bank agrees to file or cause to be filed with all governmental authorities having jurisdiction and to obtain or cause to be obtained all necessary approvals of said plans and specifications and all necessary buildings permits from said authorities. The said plans and specifications shall first be submitted to and approved by the Company, and no changes or amendments thereto shall be made without first obtaining the approval of the Company.

(b) The Bank shall furnish or cause to be furnished to the Company, on or before the making of the final advance, the final certificates of approval, including certificate of occupancy, of the various governmental authorities having jurisdiction and the certificate of the Board of Fire Underwriters acting in and for the locality in which the said premises are situated.

(c) The Bank shall furnish or cause to be furnished to the Company, or the Company may procure at the expense of the Bank, surveys made by a surveyor satisfactory to the Company whenever required by the Company.

(d) The Bank shall furnish or cause to be furnished to the Company premiums prepaid, or the Company may procure at the expense of the Bank, the standard builders risk insurance policies in companies, forms and amounts satisfactory to the Company insuring the premises against loss or damage by fire, with the usual extended coverage endorsement, and other hazards as

may reasonably be required by the Company, and insuring the Company as owner.

(e) The Company may at the expense of the Bank employ a watchman to protect the building and its contents from depredation or injury.

(f) If the construction of said building be at any time discontinued or not carried on with reasonable dispatch in the judgment of the Company, said Company may purchase materials and employ workmen to protect said building so that the same will not suffer from depredation or the weather, or to complete said building so that it may be used for the purposes for which it is designed under the said plans and specifications.

(g) The Bank will not assign this contract or the moneys due thereunder or convey or encumber the property without the written consent of the Company, but in such event the Company may nevertheless at the option of the Company, continue to make advances under this Agreement to the Bank or to those who succeed to the Bank's title; and all sums so advanced by the Company shall be deemed advances under this Agreement, and not to be modifications thereof.

(h) The Bank will furnish a complete set of "as built" plans and specifications for the Building not less than five (5) days prior to the Closing Date.

(i) The Bank will fully perform all of its obligations under any of the Exhibits to which it is a party, and will not do or permit anything within its control to be done which will impair or destroy the rights of the Company under any of the Exhibits.

(j) The Bank agrees to indemnify and save the Company harmless against and from any and all claims by or on behalf of any person or persons, firm

or firms, corporation or corporations arising out of the failure to deliver the completed Bank Building to the Company on or before the Closing Date, whether or not the Bank is at fault in connection with such failure unless the failure is the result of the act or omission of the Company.

4. *Representations and Warranties by the Company.* The Company represents and warrants that:

(a) *Organization and Standing of the Company.* The Company is a corporation duly organized and validly existing and in good standing under the laws of the State of Arkansas and has all requisite corporate power and authority to carry on its business as conducted and as proposed to be conducted, to enter into this Agreement, and to carry out the transactions contemplated thereby.

(b) *Qualification.* The Company is duly qualified and in good standing and authorized to do business in the State of Arkansas.

(c) *Solvency and Liabilities.* The Company is a solvent corporation and on December 31, 1967, had a net worth in excess of $3,000,000.00.

(d) *Litigation.* There is no action, proceeding or vestigation pending or (to the knowledge of the Company) threatened, or any basis therefor known to the Company, which might materially adversely affect the condition, business or prospects of the Company or any of its properties or assets, or which questions the validity of this Agreement or any instrument referred to herein or any action taken or to be taken pursuant hereto or thereto.

(e) *Compliance with Other Instruments.* The execution, delivery and performance of this Agreement and the carrying out of the transactions contemplated

hereby will not result in any violation of or be in conflict with any terms of the Company's articles of incorporation or by-laws or of any agreement, court orders, statute or governmental rule or regulation applicable to the Company, or result in the creation of any mortgage, lien or encumbrance (other than described herein) upon any of the properties or assets of the Company pursuant to any such term. There is no such term which materially adversely affects or in the future may, so far as the Company can now foresee, materially adversely affect the business, prospects or condition of the Company or any of its properties or assets.

(f) *Governmental Consent.* No approval, consent, order or authorization of or designation, registration, declaration or filing with any governmental or public body or authority on the part of the Company is required in connection with the valid execution and with any of the transactions contemplated hereby, except for the appropriate recordation of any of the instruments referred to herein.

(g) *Disclosure.* No certificate, statement or other document furnished the Bank by the Company or on its behalf in connection with transactions contemplated herein, nor this Agreement, contains any untrue statement of a material fact.

5. *Default by the Bank.* In the event of the occurrance of any of the following defaults by the Bank prior to the Closing Date, the Company at its option may require the Bank to repurchase the Bank Building for an amount equivalent to the sum of all reimbursements paid to the Bank under paragraph 2(b) hereof plus all expenses incurred by the Company under paragraph 6 hereof, plus interest thereon at the rate of ten per cent (10%) per annum from the date of such reimbursement or the payment of such expenses, such payments may be made through the satisfaction of the Building Loan Mortgage Note of First National City Bank, with the remainder paid in cash:

(a) The failure of the Bank to fulfill any of its obligations under this Sales Agreement or the Exhibits, unless such failure is the result of a prior default by the Company.

(b) If any representation or warranty of the Bank in this Sales Agreement, or the Exhibits, or any certification or affidavit furnished thereunder shall be or become false or misleading in any material respect.

6. *Expenses.* If the transactions contemplated hereby shall be consummated, the Company shall pay or cause to be paid:

(a) The cost, if any, of printing or reproducing this Agreement and the instruments attached as Exhibits hereto.

(b) The cost of filing or recording of any of the instruments attached as Exhibits hereto, including the cost of any additional or later filing or recording of any such instruments required by the applicable local law at the time in effect, and of any opinions of counsel obtained in connection therewith.

(c) The fees, expenses and disbursements of Company counsel, counsel for First National City Bank and counsel for New York Life Insurance Company.

(d) The cost of any title insurance and survey required hereby.

(e) Any brokerage fees.

(f) Any commitment fees.

(g) All reasonable out-of-pocket expenses incurred by the Company in connection with the transactions contemplated hereby.

7. *Closing Date.* The Closing Date shall be on the first mutually convenient date following completion of the construction of the Bank Building on or before December 1, 1969, or the date on which New York Life Insurance Company purchases the Note of the Company pursuant to paragraph 3 of the Note Purchase Agreement, whichever occurs later. On or before the Closing Date the Bank shall deliver to the Company a Warranty Deed in the form satisfactory to counsel for the Company, conveying title to the Bank Building.

8. *Subordination.* The rights and privileges of the Company and the Bank pursuant to this instrument, and all of the terms, conditions, covenants, agreements and provisions herein contained shall be subject and subordinate to the rights of New York Life Insurance Company under the Note Purchase Agreement or under the note described therein ("The Note") which it is contemplated will be purchased by New York Life Insurance Company pursuant thereto or under the Deed of Trust or any other instrument mentioned therein as being security for payment of the Note. This subordination shall be self-operative and no further instruments of subordination shall be required. Nevertheless, the Company and the Bank covenant and agree that they will, at any time and from time to time, execute, acknowledge and deliver, such instruments and certificates (in form, scope and substance satisfactory to New York Life Insurance Company) affirming and confirming such subordination as New York Life Insurance Company may reasonably request.

9. *Insolvency.* In the event of a Company default under Section 16.1 (h) or (i) of the Deed of Trust with New York Life Insurance Company then the Bank shall have the

right to purchase the Bank Building for an amount equal to the mean between two amounts determined to have been the fair market value of the Bank Building as of the date immediately prior to such default by the Company. Such amounts shall be determined by two independent appraisers who are members of M. I. A. One appraiser shall be selected by the Bank and one by the Company; but if the Company shall fail to select an appraiser within three days after receipt of written notice of the Bank's election hereunder, then the Bank shall have the right to designate the second appraiser. Such right may be exercised by giving three days' written notice to the Company and tendering the aforesaid amount in cash to the Company. Any reference to the Company hereunder shall include any Court or Court appointed referee, receiver or trustee who is in charge of the affairs of the Company.

10. For so long as the Bank is not in default with respect to its obligations under any of the Exhibits, the Bank shall have the sole and exclusive right to determine the name of the Bank Building, and the Company will make an irrevocable general election conforming to the requirements of Section 48 of the Internal Revenue Code of 1954, as the same may from time to time be amended, to treat the Bank as having purchased any property which is purchased hereunder during such taxable year, and to do or perform any other acts desirable or necessary to assign to the Bank the credit against Federal income tax presently afforded by Section 38 of the Internal Revenue Code of 1954, as the same may from time to time be amended.

11. *General.* This Agreement is being delivered and is to be performed in the State of Arkansas, and shall be construed and enforced in accordance with and governed by the laws of the State of Arkansas. This Agreement embodies the entire understanding between the Company and the Bank and supersedes all prior agreements and understandings relating to the subject matter hereof. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only

by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. All of the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respect successors and assigns of the party hereto. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof. Any instrument required by any provision hereof to be in the form attached hereto as an Exhibit shall be substantially in such form, which such changes, if any, as may be required by any other party thereto and approved by the Bank and by the Company. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

In Witness Whereof, the parties hereto have duly executed this Agreement the day and year first above written.

Frank Lyon Company
By: /s/ C. W. Abrams
President

Attest:
/s/ M. R. Godwin
Secretary

Worthen Bank & Trust Company

By: /s/ Edward M. Penick
President

Attest:
/s/ Booker Worthen
Secretary

(Acknowledgment Omitted in Printing)

Schedule of Bank Personalty

The following list of personal property is or has been incorporated into the Bank Building and is the exclusive property of the Bank. This schedule is not valid unless executed by the Frank Lyon Company and Worthen Bank & Trust Company, acknowledging the Bank ownership of any property listed.

P. Ex. 26

FRANK LYON COMPANY

6¾% SECURED NOTE

$7,140,000.00

Little Rock, Arkansas
December 1, 1969

Frank Lyon Company, an Arkansas corporation (hereinafter called "the Company"), for value received hereby promises to pay to the order of New York Life Insurance Company (hereinafter called "the Payee"), at its principal office in the Borough of Manhattan, City, County and State of New York, or such other place as the holder shall from time to time designate, the principal sum of Seven Million One Hundred Forty Thousand and No/100 Dollars in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest on the unpaid balance of said principal sum from the date hereof, in like coin or currency, at said principal office, or said other place, at the rate of six and three-fourths per cent (6¾%) per annum (computed on the basis of a 360-day year of twelve 30-day months) until maturity, and thereafter at the rate of eight per cent (8%) per annum, payment of such principal and interest to be made as hereinafter set forth in quarter-annual installments, payable on February 28, May 31, August 31, and November 30, of each year, commencing February 28, 1970, to and including November 30, 1994.

In order to provide for the payment of the principal of and interest on this note, the Company will pay to the holder forty-four (44) installments of One Hundred Forty-Five Thousand Five Hundred Eighty-One and 03/100 Dollars ($145,581.03) each, in said coin or currency, quarter-annually on February 28, May 28, May 31, August 31, and November 30, of each year, commencing February 28, 1970 to and including November 30, 1980, and fifty-six (56) in-

stallments of One Hundred Fifty-Three Thousand Two Hundred Eighty-Nine and 32/100 Dollars ($153, 289.32) each, in said coin or currency, quarter-annually on February 28, May 31, August 31, and November 30, of each year, commencing February 28, 1981, to and including November 30, 1994. All payments made pursuant to this paragraph shall be applied by the Payee first to the payment of interest on this note and the balance to the payment of principal of this note.

Upon not less than thirty (30) days' written notice to the Payee, given as provided in the below-mentioned Note Purchase Agreement, the Company may at its option prepay this Note in full, plus accrued interest thereon to the date fixed for such prepayment, plus a premium as set forth in paragraph (c) below, on the following terms and conditions:

(a) Except as provided in paragraph (b) below, there may be no prepayment prior to December 1, 1980.

(b) In the event that the Building Lease between the Company and Worthen Bank & Trust Company, dated May 1, 1968, is terminated pursuant to Section 18.1 thereof, prepayment may be made either before or after December 1, 1980.

(c) To prepay this note, the Company shall a premium equal to the applicable percentage of the then unpaid principal amount, determined as follows:

Date of Prepayment	Percentage Applicable
Prior to December 1, 1980, applicable only if paragraph (b) above applies	3.50
During the 12-month period beginning December 1	
1980	3.50
1981	3.25
1982	3.00
1983	2.75
1984	2.50
1985	2.25
1986	2.00
1987	1.75
1988	1.50
1989	1.25
1990 and thereafter	1.00

This note is the note issued and sold pursuant to a certain Note Purchase Agreement dated as of May 1, 1968, entered into by the Company with the Payee. This note is secured by, and is entitled to the benefits of, a certain Deed of Trust dated as of December 1, 1969, and a certain Assignment dated as of December 1, 1969, each executed and delivered by the Company to the Payee.

The maturity of this note may be accelerated and the whole of the principal sum and interest thereon shall become due and payable at the option of the holder hereof, without notice, upon the happening of an Event of Default as defined in the Deed of Trust referred to above.

The makers, endorsers, sureties and guarantors hereof hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and diligence in enforcing payment hereof, and consent that the time of payment may be extended without notice from time to time.

If the holder of this note employs an attorney to enforce any of the provisions hereof, the maker shall be liable to the holder for reasonable attorney's fees of the holder not to exceed ten per centum (10%) of the principal and accrued interest then due. This provisions is intended to be in compliance with the provisions of Act 350 of the 1951 General Assembly of the State of Arkansas.

FRANK LYON COMPANY

By .....
President

Attest:

.....
Secretary

P. Ex. 27

WORTHEN BANK & TRUST COMPANY

AND

FRANK LYON COMPANY,
As Grantors

TO

DARRELL D. DOVER,
As Trustee

AND

NEW YORK LIFE INSURANCE COMPANY
As Beneficiary

FIRST DEED OF TRUST

Dated as of December 1, 1969

Securing

6¾% Secured Note

(Table of Contents Omitted in Printing)

DEED OF TRUST

DEED OF TRUST, dated as of December 1, 1969, between the following (collectively, the "Grantors"):

(a) Frank Lyon Company (the "Company"), an Arkansas corporation having its principal office and place of business at West 65th Street and Scott Hamilton Drive, Little Rock, Arkansas, and

(b) Worthen Bank & Trust Company (the "Bank"), a banking corporation under the laws of Arkansas, with its principal office and place of business

at Center Street and Capitol Avenue, Little Rock, Arkansas,

and Darrell D. Dover (the "'Trustee"), having his residence at Tower Building, Little Rock, Arkansas, and acting for the benefit of New York Life Insurance Company (the "Beneficiary"), a New York corporation:

To Secure the Payment when and as due and payable of the principal of and the premium, if any. and interest on the Company's 6¼% Secured Note (the "Note") of even date herewith in the principal amount of $7,140,000 payable quarter-annually on which payments are to be made from time to time in accordance with the terms thereof; and also to secure performance by the Company and the Bank of all agreements and conditions contained herein and of all agreements of the Company contained in the Assignment and in the Note Purchase Agreement dated as of May 1, 1968, between the Company and the Beneficiary, and of all agreements of the Bank contained in the Consent and Agreement dated as of December 1, 1969;

The Company Does Hereby Grant, bargain, sell, assign, pledge and convey to the Trustee and to his successors and assigns forever the following properties (collectively, "Company Property"):

(a) all buildings, structures and other improvements now are hereafter located on certain real property hereinafter referred to as "Tract A" and described in Schedule I hereto, together with all fixtures now or hereafter attached to or located thereon (collectively, "Company Improvements"), subject (except as provided in Section 17.4 hereof) to the Building Lease described below, and

(b) all right, title and interest of the Company as Lessor in, to and under that certain lease dated as of May 1, 1968 (the "Building Lease"), between the

Company as Lessor and the Bank as Lessee covering, among other things, the Company Improvements together with rentals payable thereunder, and

(c) all right, title and interest of the Company as Lessee in, to and under that certain lease dated as of May 1, 1968 (the "Ground Lease"), between the Bank as Lessor and the Company as Lessee, covering Tract A;

all subject, however, to Permitted Encumbrances (as defined in Section 1.1).

And the Bank Does Hereby Grant, bargain, sell, assign, pledge and convey to the Trustee and to his successors and assigns forever the following properties (collectively, "Bank Property"):

(a) Tract A, subject to the Ground Lease, and

(b) certain real property hereinafter referred to as "Tract B" and described in Schedule II hereto, together with all buildings, structures, fixtures and other improvements now or hereafter attached to or located thereon (collectively, the "Parking Facility");

all subject, however, to Permitted Encumbrances (as defined in Section 1.1).

Provided, However, That the Bank joins as one of the Grantors in the execution of this Deed of Trust with respect to Bank Property solely (a) to further induce the Beneficiary to purchase the Note and (b) to comply with Section 33.1 of the Building Lease which requires the Bank to execute this Deed of Trust as a further inducement to the Beneficiary to purchase the Note; and that such execution hereof shall never be deemed to create any liability on the part of the Bank, contingent or otherwise, with respect to payment of the Note, or with respect to performance of any obligation of the Company hereunder;

and the Beneficiary specifically concurs in the above by accepting this Deed of Trust; and

Further Provided That the Company Property and the Bank Property shall include all awards with respect to any Taking (as defined in Section 1.1) thereof;

To Have and to Hold the Company Property and the Bank Property (hereafter sometimes collectively referred to as "the Property") unto the Trustee, his successors and assigns forever.

In Trust, Nevertheless, upon the terms and trusts herein set forth.

And the Company hereby binds itself, its successors and assigns, to warrant and forever defend the Company Property to the Trustee and his successors and assigns, against the claims and demands of all persons whomsoever.

And the Bank hereby binds itself, its successor and assigns, to warrant and forever defend the Bank Property to the Trustee and his successors and assigns, against the claims and demands of all persons whomsoever.

It Is Hereby Covenanted by the parties hereto that the Company Property and the Bank Property is to be held and applied subject to the further terms herein set forth; and the Company and the Bank for themselves and their successors and assigns hereby covenant and agree with the Trustee for the benefit of the Beneficiary as follows:

ARTICLE I

DEFINITIONS

Section 1.1. *Terms Defined.* As used in this Deed of Trust, the following terms have the following respective meanings:

(1) *Additional Rent:* as defined in the Building Lease.

(2) *Assignment:* the Assignment dated as of December 1, 1969, wherein the Company has assigned to the Beneficiary the Company's interest as Lessor in and to the Building Lease.

(3) *Basic Rent:* as defined in the Building Lease.

(4) *Beneficiary:* New York Life Insurance Company or (if appropriate) the then holder of the indebtedness secured hereby.

(5) *Company Order and Company Request:* respectively, and order or request signed in the name of the Company or the Bank by the President or a Vice President and by the Treasurer or an Assasistant Treasurer of the Secretary or an Assistant Secretary, and delivered to the Beneficiary.

(6) *Default:* any condition or event which constitutes or which, after notice or lapse of time or both, would constitute an Event of Default.

(7) *Events of Default:* as defined in Section 17.1.

(8) *Officers' Certificate:* a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer of the Company or the Bank and delivered to the Beneficiary.

(9) *Opinion of Counsel:* a written opinion of counsel, who may be counsel for the Company or the Bank, selected by the Company or the Bank and acceptable to the Beneficiary.

(10) *Permitted Encumbrances:* (a) liens for taxes and assessments not due and delinquent or being contested as provided herein, and (b) unfiled mechanics' and materialmen's liens.

(11) *Restoration:* as definied in Section 12.2.

(12) *Taking:* a taking of all or any part of the Property, or any interest therein or right accruing thereto, including,

without limitation, any right of access thereto existing on the date of this Deed of Trust, as the result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade affecting the Property or any part thereof.

(13) *Total Destruction:* as defined in Section 12.3.

(14) *Total Taking:* as defined in Section 13.3.

(15) *Trust Estate:* the Property at the time subject to this Deed of Trust and all other properties and moneys at the time subject to the lien of this Deed of Trust or held by the Trustee hereunder.

(16) *Unavoidable Delays:* delays due to strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of the Company and/or the Bank. Lack of funds shall not be deemed a cause beyond the control of the Company and/or the Bank.

SECTION 1.2. *References to "Grantors" and "Property."* Although the term "Grantors" shall means the Company and the Bank collectively, nevertheless the duties imposed herein upon the Grantors with respect to the Property shall be imposed only upon the Company with respect to Company Property and only upon the Bank with respect to Bank Property, anything herein contained to the contrary notwithstanding.

ARTICLE II

THE NOTE

SECTION 2.1. *Payment of Note.* The Company will duly and punctually pay

(a) the principal of and the premium, if any, and interest on the Note in accordance with its terms, and

(b) when and as due and payable, all other indebtedness secured hereby for which it is liable.

SECTION 2.2. *Optional Prepayment.* The Company may, at its option, prepay the Note in accordance with and to the extent permitted by the terms thereof.

ARTICLE III

TITLE AND AUTHORITY

SECTION 3.1. *The Company.* The Company represents and warrants that it has good and marketable title in fee simple absolute to the Company Property, subject to no lien, encumbrance or charge other than the Building Lease and Permitted Encumbrances, and that it has good and lawful right and authority to execute this Deed of Trust. The Company at its expense will warrant and defend to the Trustee such title to the Company Property and the lien and interest of the Trustee against all claims and demands and will maintain and preserve such lien so long as the Note is outstanding.

SECTION 3.2. *The Bank.* The Bank represents and warrants that it has good and marketable title in fee simple absolute to the Bank Property, subject to no lien, encumbrance or charge other than the Ground Lease and Permitted Encumbrances, and that it has good and lawful right and authority to execute this Deed of Trust. The Bank at its expense will warrant and defend to the Trustee such title to the Bank Property and the lien and interest of the Trustee against all claims and demands and will maintain and preserve such lien so long as the Note is outstanding.

ARTICLE IV

WARRANTIES AS TO LEASES

SECTION 4.1. *Warranty as to Building Lease.* The Grantors warrant that the Building Lease is a valid and subsisting lease of the Company Improvements purported to be leased thereby for the term therein set forth, that

the copy thereof filed with the Beneficiary is a true, correct and complete copy thereof, and that there is no default under the Building Lease.

SECTION 4.2. *Warranty as to Ground Lease.* The Grantors further warrant that the Ground Lease is a valid and subsisting lease of Tract A purported to be leased thereby for the term therein set forth, that the copy thereof filed with the Beneficiary is a true, correct and complete copy thereof, and that there is no default under the Ground Lease.

ARTICLE V

RECORDATION

SECTION 5.1. The Grantors at their expense will at all times cause this Deed of Trust and any amending or supplemental instrument or financing statement with respect thereto to be recorded and filed and to be kept recorded and filed in such manner and in such places, and will pay all such recording and filing fees and other charges, and will comply with all such statutes and regulations, as may be required by law in order to establish, preserve and protect the lien of this Deed of Trust as a valid first Deed of Trust lien of record on the Property.

ARTICLE VI

MAINTENANCE AND REPAIRS

SECTION 6.1. The Grantors at their expense will keep the Property and the adjoining sidewalks, curbs, and vaults in good and clean order and condition and will make all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be equal in quality and class to the original work. The Grantors at their expense, will do all shoring of foundation and

walls of the Company Improvements and/or Parking Facility or of the ground adjacent thereto and will do every other act necessary or appropriate for the preservation and safety of the Company Improvements and/or Parking Facility by reason of or in connection with any excavation or other building operation upon Tract A or Tract B or any adjoining property.

ARTICLE VII

PAYMENT OF TAXES AND CLAIMS FOR LABOR AND MATERIALS

SECTIONS 7.1. *Payments.* The Grantors shall promptly pay and discharge before any penalty attaches thereto all taxes, rates, impositions, assessments and governmental charges or levies imposed upon the Property or any part thereof, as well as all claims for labor, materials and supplies which, if unpaid, might become a lien or charge upon the Property, so that the lien of this Deed of Trust shall at all times be wholly preserved without expense to the Beneficiary.

SECTION 7.2. *Contests.* The Grantors shall not be required to pay any such tax, rate, imposition, assessment, charge, levy or claim (1) if the validity, applicability or amount thereof shall currently be contested in good faith by appropriate proceedings, and (2) if the Appropriate Grantor (Company with respect to Company Property and Bank with respect to Bank Property) shall have furnished the Beneficiary an Opinion of Counsel stating that the nonpayment of such item pending such contest will not subject any part of the Property to forfeiture or loss (including loss by reason of the termination or cancellation of either the Building Lease or the Ground Lease). The Appropriate Grantor shall set aside on its books adequate reserves with respect to such contested liability and shall furnish such security, if any, as may be required in the proceedings or reasonably requested by the Beneficiary.

This security may include a deposit of a sum equal to the amount so contested and unpaid together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Property or any part thereof in said proceedings. If at any time during the continuance of such proceedings the Beneficiary shall deem the amount deposited with it insufficient, the Appropriate Grantor shall, upon demand, make an additional deposit of such sum as the Beneficiary may reasonably request, and upon failure so to do, the amount theretofore deposited may be applied to the payment, removal and discharge of the tax or other impositions and the interest and penalties in connection therewith, together with any costs, fees or other liabilities accruing. The balance, if any, shall be returned to the Appropriate Grantor, provided there is no then existing default under the Building Lease. Upon the termination of such proceedings, the Appropriate Grantor shall pay the amount of such tax or other claim as finally determined, together with any costs or other liabilities in connection therewith. Upon such payment, the Beneficiary shall return to the Appropriate Grantor the amount of any deposit above referred to, provided that there is no then existing default under the Building Lease.

ARTICLE VIII
COMPLIANCE WITH LAWS

SECTION 8.1. *Compliance.* The Grantors shall, with respect to the Property, promptly comply with all requirements of all laws, orders, ordinances, rules and regulations of the Federal, State, county and municipal authorities, and with any direction or certificate of occupancy of any public officer or officers, and the orders, rules and regulations of the National Board of Fire Underwriters and each other body having similar functions, and with requirements of all policies of public liability, fire, and other insurance at any time in force which shall impose any duty

with respect to all or any part of the Property or the use, occupation or control thereof or the conduct of any business therein, whether or not any of the same require structural repairs or alterations.

SECTION 8.2. *Contests.* The Appropriate Grantor shall not be required to comply with any such law, order, ordinance, rule, regulation, direction or certificate of occupancy (1) if the validity or legality thereof shall currently be contested in good faith by appropriate proceedings and (2) if it shall have furnished to the Beneficiary an Opinion of Counsel stating that noncompliance therewith pending the termination of such contest will neither cause any of the properties and interest which is included in the Property or any part thereof to be condemned or vacated, provided that all such proceedings shall be prosecuted with due diligence and dispatch, and further provided that the Appropriate Grantor shall furnish to the Beneficiary such security as it may reasonably require to preclude any loss or injury by reason of such noncompliance or delay therein.

ARTICLE IX
LIENS

SECTION 9.1. This Deed of Trust is, and always will be kept, a first lien upon the Property, subject only to the exceptions and limitations stated herein. The Grantors will not create or suffer to exist any lien or charge prior to or upon a parity with the lien of this Deed of Trust upon the Property or any part thereof, except as otherwise stated herein.

ARTICLE X
INSURANCE

SECTION 10.1. *Risks to be Insured.* At their expense, the Grantors shall:

A. keep the Property insured against loss or damage by fire and lightning and such other risks as are

insurable against under present or future standard forms of extended coverage insurance, in amounts not less than 100% of then full insurable value;

B. keep the Property insured against war risks as and when such insurance is obtainable from the United States of America or an agency thereof, in an amount not less than 100% of then full insurable value;

C. keep the Property insured in an amount not less than 10% of then full insurable value against loss or damage from leakage of sprinkler systems now or hereafter installed therein;

D. keep the Property insured against loss or damage from explosion of steam boilers, pressure vessels or similar apparatus with respect to all steam boilers, pressure vessels or similar apparatus now or hereafter installed upon the Property, in any amount not less than $100,000 with respect to any one accident; and

E. keep the Property insured as reasonably required by the Beneficiary and against all risks insured against by prudent persons owning like properties in like localities, giving due regard to the height and type of building, its construction, location, use and occupancy.

The term "full insurable value" shall mean the actual replacement cost (excluding foundation and excavation costs for the purposes of the foregoing Subsections A and C, but including such foundation and excavation costs for the purposes of the foregoing Subsection B), less physical depreciation, and said "full insurable value" shall be determined from time to time (but not more frequently than once in every 12 months period), at the request of the Beneficiary by an architect, contractor, appraiser, ap-

praisal company or one of the insurers selected and paid by the Grantors and acceptable to the Beneficiary.

All insurance for which provision has been made in Subsection E of this Section shall be maintained in such amounts as such insurance is usually carried by prudent persons engaged in the same or a similar business; and all insurance herein provided for shall be effected under a valid and enforceable policy or policies issued by insurers of recognized responsibility.

The policy or other contract of insurance in respect of the hazard of the character described in Subsection D of this Section may provide, in effect, that the first $1,000 of loss sustained shall be paid by the Appropriate Grantor and that additional losses sustained, which are insured against under such policy or other contract of insurance, shall be paid by the insurer.

All proceeds of insurance in respect of hazards of the character described in Subsection A, B, C, D and E of this Section covering any part of the Property (except in the case of any particular casualty resulting in loss payment not exceeding $50,000 in the aggregate) shall be paid to the Beneficiary. All policies or other contracts for such insurance shall provide that the proceeds of such insurance (except in the case of any particular casualty resulting in a loss payment not exceeding $50,000 in the aggregate) shall be payable to the Beneficiary as its interest may appear (by means of the standard mortgagee clause without contribution, if obtainable). All policies or certificates issued by the respective insurers for such insurance shall contain an agreement by such insurer that such policies shall not be cancelled without at least 10 days prior written notice to the Beneficiary. Upon the execution of this Deed of Trust and thereafter not less than 10 days prior to the expiration dates of expiring policies or contracts held by the Beneficiary, originals of all policies or contracts (or certified copies thereof or certificates there-

for) of insurance in respect of hazards of the character described in Subsections A, B, C, D and E of this Section shall be deposited with the Beneficiary. Within 30 days after each quarterly period ending on the last day of February, May, August and November of each year (commencing with the quarterly period ending February 28, 1970) the Appropriate Grantor will deliver to the Beneficiary an Officers' Certificate stating that, as to all such policies and contracts with respect to which the amount of premiums thereon shall have been determined and shall have become due and payable during such quarterly period, payment of all such premiums has been made.

Nothing in this Section shall prevent the Appropriate Grantor from taking out policies of blanket insurance, which may cover other property not included, as well as property included in the Property; provided, however, that the amount of the total insurance allocated to the buildings and fixtures constituting part of the Property (which amount shall at all times be not less than the applicable amount required by this Section) shall be specified either (1) in such policy of blanket insurance or (2) in a written statement obtained from the insurers under such policy, which written statement, in the case of insurance in respect of hazards of the character described in Subsections A, B, C, D and E of this Section, shall be deposited with the Beneficiary and provided, further, that in all other respects, any such policy shall comply with the other provisions of this Section.

Section 10.2. *Insurance Proceeds.* All proceeds of any insurance on the Property, to the extent that the same shall not be payable to the Beneficiary as aforesaid, shall be applied by the Appropriate Grantor to the repair, restoration or replacement of the property destroyed or damaged.

Proceeds of insurance on the Property or any part thereof, if payable to the Beneficiary, may be withdrawn and shall be paid by the Beneficiary upon Company Order

either as reimbursement for expenditures made to repair, restore or replace the property destroyed or damaged (which shall include expenditures made for temporary repairs or for the protection of property pending the completion of permanent repairs, restorations or replacements, or to prevent interference with the business operated thereon, and repair, restorations and replacements then in process insofar as actually made or constructed) or to pay contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for such repairs, restorations or replacements, upon the receipt by the Beneficiary of the following:

A. An Officers' Certificate dated not more than 30 days prior to the application for the withdrawal of such proceeds, setting forth in substance as follows:

(1) That such funds are proceeds of insurance on a specified portion of the Property destroyed or damaged.

(2) That the sum then requested to be withdrawn either has been paid by the Appropriate Grantor and/or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered services or furnished materials for certain repairs, restorations or replacements to such portion of the Property, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid and/or due to each of said persons in respect thereof, and stating the fair value of such repairs, restorations or replacements at the date of the acquisition thereof.

(3) That no part of such several amounts so paid and/or due has been or is being made the

basis for the withdrawal of any proceeds from the Beneficiary under this Deed of Trust in any previous or then pending application, or has been paid out of the proceeds of insurance not required to be paid to the Beneficiary.

(4) That, except for the amounts, if any, stated in said Officers' Certificate pursuant to the foregoing Clause (2) of this Subsection to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for labor, wages, services, materials or supplies in connection with said repairs, restorations or replacements, which, if unpaid, might become the basis of a vendors', mechanics', laborers', materialmen's, statutory or other similar lien, upon said repairs, restorations, or replacements, or any party thereof, which might, in the opinion of the signers of said Officers' Certificate, materially impair the security afforded by said repairs, restorations or replacements.

(5) That no Event of Default, or other event which, with lapse of time or notice and lapse of time would become an Event of Default, has occurred which has not been remedied.

B. An Opinion of Counsel stating:

(1) That the Appropriate Grantor has acquired a good and valid legal title to all materials and all property constituting said repairs, restorations or replacements which are described in said Officers' Certificate, and that the same and every part thereof are free and clear of all mortgages, liens, charges or encumbrances prior to or on a parity with the lien of this Deed of Trust, except Permitted Encumbrances and encumbrances, if

any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said Officers' Certificate pursuant to the foregoing Subsection A(2), which encumbrances will be discharged upon payment of such indebtedness.

(2) That all of the Appropriate Grantor's right, title and interest in and to said repairs, restorations or replacements are then subject to the lien of this Deed of Trust.

Upon compliance with the foregoing provisions of this Section, the Beneficiary shall, out of such insurance proceeds, on Company Request pay to the persons named in said Officers' Certificate pursuant to the foregoing Subsection A(2) of this Section, the respective amounts stated in said Officers' Certificate to be due to them, and/or shall pay on Company Order the amount stated in said Officers' Certificate to have been paid, provided, however, that the aggregate amount of all such payments shall not exceed in total amount the fair value as stated in said Officers' Certificate of the relevant repairs, restorations or replacements.

This Section 10.2 shall not apply to a Total Destruction as defined in Section 12.3 hereof, and Section 17.6 of the Building Lease shall apply to the payment of insurance proceeds in such event.

SECTION 10.3 *Adjustment of Loss and Statement of Insurance in Force.* In case of any loss in respect of any of the Property covered by any policy or other contract of insurance, any adjustment and settlement of such loss which shall be agreed upon between the Appropriate Grantor and any insurer, as evidenced by an Officers' Certificate, shall be accepted by the Beneficiary; provided, however, that no adjustments or settlement in excess of

$200,000 shall be made unless the Beneficiary has consented thereto.

The Grantors will furnish to the Beneficiary, forthwith upon the execution of this Deed of Trust and within 40 days after the end of each fiscal year thereafter, and at any time upon the Beneficiary's reasonable request, an Officers' Certificate containing a statement of the insurance effected pursuant to this Article and then in force, and stating that said insurance complies with the covenants in this Article.

ARTICLE XI

ALTERATIONS AND ADDITIONS

SECTION 11.1. *Limitations on Building Demolition, Alterations, Improvements and New Construction.* The Grantors will not authorize, permit or make any demolition, alteration or improvement of any building, structure, or other improvements included in the Property or any new construction on any part of the Property, except, as to any such alteration, improvement or new construction, in conformity with and subject to the limitations hereinafter in this Section set forth.

Unless an Event of Default shall have occurred which shall not have been remedied, the Grantors shall have the right (subject to Article XV of the Building Lease) at all times to make or permit alterations, improvements or new construction, structural or otherwise, of or on the Property, including, without limiting the generality of the foregoing, the right to connect any building included in the Property with any adjoining building or buildings or part thereof if the building with which any such connection is made is also a part of the Property. Such alterations, improvements or new construction (herein sometimes collectively called "changes and alterations" or "changes or alterations") shall be made in all cases subject to the following conditions:

A. No change or alteration shall be undertaken or carried on until there shall have been procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions havings jurisdiction, which are requisite for the completion of such change or alteration.

B. The building or buildings as so improved or altered, upon completion of the work, shall be of a value not less than the value of such building or buildings immediately prior to the making of such improvement or alterations.

C. Any change or alteration involving an estimated cost of more than $100,000 shall be conducted under the supervision of an architect or engineer selected by the Appropriate Grantor, and who shall be satisfactory to the Beneficiary, and no such change or alteration shall be undertaken until 20 days after there shall have been filed with the Beneficiary detailed plans and specifications and cost estimates therefor, prepared and approved in writing by such architect or engineers and accompanied by a certificate of such architect or engineer stating that such plans and specifications conform to all applicable provisions of this Section.

D. No change or alteration involving an estimated cost of more than $250,000 shall be undertaken until either

(1) the Beneficiary shall have been furnished with a bond, on which the Appropriate Grantor shall be principal and a surety company of recognized responsibility shall be surety, and in form satisfactory to the Beneficiary, conditioned upon the completion of any payment in full for such

change or alteration within a reasonable time, subject to Unavoidable Delays, or

(2) the Appropriate Grantor shall have deposited or caused to be deposited with the Beneficiary an amount of money equal to said estimated cost;

E. Moneys deposited with the Beneficiary pursuant to Clause (2) of the foregoing Subsection D may be withdrawn by the Appropriate Grantor, and shall be paid by the Beneficiary as hereinafter provided from time to time, upon receipt by the Beneficiary of the following:

(1) an Officers' Certificate, dated not more than 30 days prior to the application for such withdrawal, and signed also (except as to Subclauses (c) and (e) of this Clause) by the architect or engineer referred to in Subsection C of this Section, setting forth in substance as follows:

(a) That the sum then requested to be withdrawn either has been paid by the Appropriate Grantor, and/or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered services or furnish materials for any such change or alteration pursuant to the plans and specifications therefor previously filed with the Beneficiary pursuant to Subsection C of this Section, and giving a brief description of such services and materials and the principal subdivisions or categories thereof, and the several amounts so paid or due to each of said persons in respect thereof, and stating the progress of such change or alteration pursuant to said plans and specifications up to the date of said Officers' Certificate, and that, so far as they are

applicable to the conduct of such change or alteration, Subsections A and G of this Section have been fully complied with.

(b) That the sum then requested to be withdrawn from the Beneficiary on account of account of such change or alteration, does not exceed the total cost thereof insofar as actually accomplished up to the date of said Officers' Certificate, and that in the opinion of the signers the remaining moneys so deposited with the Beneficiary will be sufficient to pay in full for the completion of such change or alteration.

(c) That no part of such several amounts so paid and/or due has been or is being made the basis of the withdrawal of any moneys from the Beneficiary under this Deed of Trust, in any previous or then pending application, or has been paid out of the proceeds of insurance not required to be paid to the Beneficiary hereunder.

(d) That, except for the amounts, if any, stated in said Officers' Certificate, pursuant to Subclause (a) of this Clause, to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, to the Appropriate Grantor which is then due and payable for labor, wages, services, materials or supplies in connection with such change or alteration which, if unpaid, might become the basis of a vendors', mechanics', laborers', materialmen's, statutory or other similar lien, upon such change or alteration, or any part thereof, which might, in the opinion of the signers of said Officers' Certificate, materially impair the security afforded by such change or alteration.

(e) That no Event of Default has occurred which has not been remedied.

The statements contained in said Officers' Certificate pursuant to this Clause may be based upon information furnished to the Company by the Bank pursuant to the Building Lease.

(2) An Opinion of Counsel stating:

(a) That the Appropriate Grantor has a good and valid legal title to all materials and all property constituting such change or alteration which are described in said Officers' Certificate, free and clear of all mortgages, liens, charges or encumbrances prior to or on a parity with the lien of this Deed of Trust, except Permitted Encumbrances, and encumbrances if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said Officers' Certificate pursuant to the foregoing Clause (1) (a) of this Subsection, which encumbrances will be discharged upon payment of such indebtedness.

(b) That all of the Appropriate Grantor's right, title and interest in and to the property constituting such change or alteration is then subject to the lien of this Deed of Trust.

Upon compliance with the foregoing provisions of this Subsection, the Beneficiary shall pay to the persons named in said Officers' Certificate pursuant to Subclause (a) of said Clause (1) the respective amounts stated in said Officers' Certificate to be due to them and/or shall pay on Company Order the amount stated in said Officers' Certificate to have been paid by the Company or the Bank.

F. At any time after the completion in full, pursuant to the plans and specifications therefor previously filed with the Beneficiary under Subsection C of this Section, of any change or alteration in respect whereof such moneys were deposited, the whole balance of moneys so deposited with the Beneficiary and then remaining on deposit may be withdrawn by the Appropriate Grantor and shall be paid by the Beneficiary upon Company Order, upon receipt by the Beneficiary of an Officers' Certificate, dated not more than 5 days prior to the application for such withdrawal, and signed also (except as to Clauses (3) and (4) of this Subsection) by the architect or engineer referred to in Subsection C of this Section setting forth in substance as follows:

(1) That such change or alteration in respect of which such moneys were deposited has been completed in full pursuant to the plans and specifications therefor previously filed with the Beneficiary under Subsection C of this Section.

(2) That all amounts which the Appropriate Grantor is or may be entitled to withdraw under Subsection E of this Section on account of services rendered or materials furnished in connection with such change or alteration have been withdrawn under said Subsection E.

(3) That all amounts for whose payment the Appropriate Grantor is or many become liable in respect of such change or alteration have been paid in full.

(4) That no Event of Default, or other event which, with lapse of time or notice and lapse of time, would become an Event of Default, has occurred which has not been remedied.

The statements contained in said Officers' Certificate pursuant to this Subsection may be based upon infor-

mation furnished to the Company by the Bank pursuant to the Building Lease.

G. All work done in connection with any change or alteration shall be done promptly and in good and workmanlike manner and in compliance with the building and zoning laws of the municipality or other governmental subdivision wherein the Property is situated, and with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof, and in accordance with the orders, rules and regulations of the National Board of Fire Underwriters, or any other body now or hereafter constituted exercising similar functions; the work in connection with any change or alteration shall be prosecuted with reasonable dispatch, Unavoidable Delays excepted.

ARTICLE XII

DAMAGE TO OR DESTRUCTION OF PROPERTY

SECTION 12.1. *Notice.* In case of any material damage to or destruction of the Property or any part thereof, the Grantors will promptly give written notice thereof to the Beneficiary, generally describing the nature of such damage or destruction.

SECTION 12.2. *Restoration.* In case of any damage to or destruction of the Property or any part thereof other than a Total Destruction (as defined in Section 17.6 of the Building Lease), the Grantors will (whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose) promptly commence and complete (subject to Unavoidable Delays) the restoration, replacement or rebuilding of the Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction, with such alterations and additions as may be made pursuant to and subject to the

conditions of Article XI (such restoration, replacement, rebuilding, alterations and additions, together with any temporary repairs and property protection pending completion of the work, being herein called "Restoration").

SECTION 12.3. *Total Destruction.* In case of Total Destruction (as defined in Section 17.6 of the Building Lease) of the Company Improvements, the Company will, within 5 days after receipt of the notice provided therein, furnish or cause the Bank to furnish a copy of such notice to the Beneficiary. Section 10.2 hereof shall not apply to a Total Destruction, and Section 17.6 of the Building Lease shall apply in lieu thereof. If the Company shall fail to comply with Section 17.6 of the Building Lease, the Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Company and of each future owner of the Company Property in order to comply with such provisions, including, without limitation, the execution and delivery, in the name of and on behalf of the Company or other owner of the Company Property, of a deed, bill of sale and/or other instrument of conveyance of the Company Property to the Bank, but such appointment shall not prevent any failure on the part of the Company or the Bank to comply with the terms of this Section from constituting a default under this Deed of Trust.

ARTICLE XIII

TAKING OF PROPERTY

SECTION 13.1. *Notice; Assignment of Awards, etc.* In case of a Taking of all or any part of the Property, or the commencement of any proceeding or negotiations which might result in any such Taking, the Grantors will promptly give written notice thereof to the Beneficiary, generally describing the nature and extent of such Taking or the nature of such proceedings or negotiations and the nature and extent of the Taking which might result therefrom, as the case may be. The Grantors hereby irrevocably assign, transfer, and

set over to the Beneficiary all of their rights to any award or payment on account of any Taking. Should all or any part of the Property be taken by eminent domain (other than a Taking by eminent domain for governmental occupancy for a limited period as set forth in Section 18.7 of the Building Lease), the Grantors forthwith, upon receipt, shall deposit the award for such property so taken with the Beneficiary and any amount paid by the Bank pursuant to Section 18.1 of the Building Lease. In the event of any such Taking, the Beneficiary shall release the property so taken, but only upon receipt by and deposit with the Beneficiary of the following:

A. The amount of the award for said property and any amount payable by the Bank pursuant to Section 18.1 of the Building Lease.

B. An Opinion of Counsel stating:

(1) That such property has been taken by eminent domain.

(2) That the award for the property so taken has become final or that an appeal from such award is not advisable in the interests of the Company or the Beneficiary.

All moneys received by the Beneficiary as compensation for the whole or any part of the Property taken by eminent domain, and all moneys paid by the Bank pursuant to Section 18.1 of the Building Lease shall be held by the Beneficiary as a part of the Trust Estate, and upon any sale of the Trust Estate, or any part thereof, said funds shall be applied, with the proceeds of such sale, to the payment of all sums hereby; but prior to any such sale, all or any part of the said funds may be withdrawn and shall be paid over or applied by the Beneficiary from time to time as provided in Section 13.4 hereof.

SECTION 13.2 *Partial Taking.* In case of a Taking of the Property other than Total Taking (as defined in Section 13.3 hereof), the Grantors will (whether or not the awards or payments, if any, on account of such Taking shall be sufficient for the purpose) promptly commence and complete (subject to Unavoilable Delays) Restoration of the Property as nearly as possible to its value, condition and character immediately prior to such Taking, except for any reduction in area caused thereby, provided that in case of a Taking for a limited period of the character described in Section 18.7 of the Building Lease the Grantors shall not be required to effect Restoration until such Taking is terminated.

SECTION 13.3 *Purchase.* In case of a Taking of the Property resulting in termination of the Building Lease pursuant to Section 18.1 thereof or resulting in purchase of the Company Property by the Bank pursuant to Section 18.2 of the Building Lease ("Total Taking"), the Company will, within 5 days after receipt of the Bank's notice of termination (if any) or purchase, furnish or cause the Bank to furnish a copy thereof to the Beneficiary. If the Company shall fail to comply with Section 18.4 of the Building Lease, the last sentence of Section 12.3 hereof shall apply.

SECTION 13.4 *Application of Awards.* All awards and payments received by or payable to the Beneficiary on account of a Taking of all or any part of the Property (less the actual costs, fees and expenses incurred in the collection thereof) shall be applied or dealt with by the Beneficiary as follows:

A. All such awards and payments received on account of a Taking of the Property other than a Total Taking (as defined in Section 13.3 hereof) may be withdrawn and shall be paid by the Beneficiary upon Company Order either to reimburse the Company or the

Bank for expenditures made to repair or restore the Property affected by any such Taking (which include expenditures made for temporary repairs or for the the protection of property ending the completion of prmanent repairs, restorations and replacements, or to prevent interference with the business operated thereon, and repairs, restorations and replacements then in process insofar as actually made or constructed) or to pay contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for said repairs, restorations or replacements, upon receipt by the Beneficiary of the following:

(1) An Officers' Certificate, dated not more than 30 days prior to the application for the withdrawal of such funds and signed also as to Clause (b) of this Subsection (1) by an architect or engineer selected by the Bank or the Company, who may be in the employ of the Company or the Bank and shall be acceptable to the Beneficiary, setting forth in substance the following:

(a) That specified funds are proceeds of an award for the Taking by eminent domain of a specified part of the Property.

(b) That, in the opinion of said architect or engineer and of the Company or the Bank, the injury, damage and loss from such Taking have been or can be so repaired, restored or replace that the remaining portion of the Property can be effectively used in the business of the Company or the Bank.

(c) That the sum then requested to be withdrawn has been paid by the Company or the Bank, and/or is justly due, to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered services or furnished materials for certain repairs, restorations or replacements, and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid and/or due to each of said persons in respect thereof, and also stating the fair value to the Company or the Bank of such repairs, restorations or replacements at the time of acquisition thereof by the Company or the Bank.

(d) That no part of such several amounts so paid and/or due has been or is being made the basis for the withdrawal of any funds from Beneficiary under this Deed of Trust, in any previous or then pending application, or has been paid out of the proceeds of insurance not required to be paid to the Beneficiary under Article X.

(e) That, except for the amounts, if any, stated in said Officers' Certificate pursuant to (1) to be due for services or materials, there the foregoing Clause (c) of this Subsection is no outstanding indebtedness known, after due inquiry, to the Company or the Bank which is then due and payable for labor, wages, services, materials, or supplies in connection with said repairs, restorations or replacements, which, if unpaid, might become the basis of a vendors', mechanics', laborers', materialmen's statutory or other similar lien, upon the Property or any part thereof, which might, in the opinion of the signers of said Officers' Certificate, materially impair the security afforded by the Property.

(f) That no Event of Default, or other event which, with the lapse of time or the notice and lapse of time specified in Section 17.1, would become an Event of Default, has occurred which has not been remedied.

The statements contained in said Officers' Certificate pursuant to this Subsection may be based upon information furnished to the Company by the Bank pursuant to the Building Lease.

(2) An opinion of Counsel stating:

(a) That the Company or the Bank has acquired a good and valid legal title to all materials and all property constituting said repairs, restorations or replacements which are described in said Officers' Certificate, and that the same and every part thereof are free and clear of all mortgages, liens, charges or encumbrances prior to or on a parity with the lien of this Deed of Trust, *except* Permitted Encumbrances and encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said Officers' Certificate pursuant to the foregoing Subsection (1)(c), which encumbrances will be discharged upon payment of such indebtedness.

(b) That all of the Grantors' right, title and in and to said repairs, restorations or replacements are then subject to the lien of this Deed of Trust.

Upon compliance with the foregoing provisions of this Section the Beneficiary shall out of funds of the character aforesaid, on Company Request pay to the persons named

in said Officers' Certificate pursuant to the foregoing Subsection (1)(c) of this Section, the respective amounts stated in said Officers' Certificate to be due to them, and/or shall pay on Company Order the amount stated in said Officers' Certificate to have been paid by the Company or the Bank; *provided, however,* that the aggregate amount of all such payments shall not exceed in total amount the fair value as stated in said Officers' Certificate of the relevant repairs, restorations or replacements.

B. All such awards and payments received or payable on account of a Total Taking shall be paid or applied as provided in Section 18.4 of the Building Lease.

ARTICLE XIV

Undisbursed Proceeds or Awards

Section 14.1 Any insurance proceeds, the payment of which is subject to Section 10.2 hereof and which are not disbursed by the Beneficiary upon Company Order or Request pursuant thereto, and any award, the payment of which is subject to Section 13.4A and which is not disbursed by the Beneficiary upon Company Order or Request pursuant thereto, shall be paid by the Beneficiary to the Bank, provided that at the time of such payment there exists no default in the performance of any of the terms, covenants or conditions of this Deed of Trust or of the Building Lease.

ARTICLE XV

Maintenance of Corporate Existence

Section 15.1. The Company will maintain, preserve and keep in full force and effect its corporate existence, rights and privileges in the State of Arkansas until the Note has been paid in full or until the Bank has assumed the indebtedness (in compliance with applicable provisions of

the Building Lease) due under the Note, whichever shall first occur.

ARTICLE XVI

Advances by Beneficiary

Section 16.1. If either the Company or the Bank shall fail to perform any of its covenants in this Deed of Trust, the Beneficiary may, at any time and from time to time, in its discretion, make advances to effect performance of any such covenant on behalf of the Company or the Bank; and all such moneys advanced by the Beneficiary, together with interest at the rate of 10% per annum, shall be repaid by the Company or the Bank, as the case may be, upon demand and shall be secured under this Deed of Trust, but no such advance shall relieve the Company or the Bank, as the case may be, from any default hereunder.

ARTICLE XVII

Remedies

Section 17.1. *"Events of Default" Defined; Acceleration of Maturity.* In case one or more of the following "Events of Default" shall happen and shall not have been remedied, that is to say:

A. default shall be made in the payment of any interest on the Note when the same shall become due and payable, and such default shall continue for a period of 10 days after written notice thereof shall have been given to the Grantors by the Beneficiary; or

B. default shall be made in the payment of the principal of, or any premium on, the Note when the same shall become due and payable and such default shall continue for a period of 10 days after written notice thereof shall have been given to the Grantors by the Beneficiary; or

C. the Building Lease shall have terminated for any reason (other than as permitted therein); or

D. default shall be made in the performance of any covenant hereunder or in the Assignment; or

E. default shall be made in the performance of any covenant or warranty in the Note Purchase Agreement or in the Consent and Agreement of the Bank, and such default shall continue for a period of 30 days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the Grantors by the Beneficiary; or

F. the Company (or the Bank in the event of an assumption of the indebtedness due under the Note in compliance with applicable provisions of the Building Lease) shall

(1) apply for, or consent in writing signed on behalf of its officers or its duly authorized attorney to, the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; or

(2) file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due; or

(3) make a general assignment for the benefit of creditors; or

(4) file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law; or

(5) file an answer admitting the material allegations of or consent to, or default in answering a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or

G. an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Company (or the Bank in the event of an assumption of the indebtedness due under the Note in compliance with applicable provisions of the Building Lease) insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days;

then and upon each and every such Event of Default, the entire indebtedness secured by this Deed of Trust shall be and become immediately due and payable at the option of the Beneficiary, and the Beneficiary may enforce any appropriate remedy against the Grantors and proceed by suit to foreclosure or by suits at law or in equity, as the Beneficiary may elect, to enforce payment of all sums secured hereby. Without limiting the generality of the foregoing, the Beneficiary may, to the extent permitted by law, in case one or more of the Events of Defaults shall happen and shall not have been remedied, enter into and uplon all or any part of the Property (including the books, papers and accounts of the Company and the Bank relating to the Property), and may exclude the Company, and the ly or partly therefrom; and, holding the same, the Bene- Bank, and all persons claiming under either of them, whol- ficiary may use, operate, manage and control the Property and conduct the business thereof, and exercise all rights and powers of the Company, including all the rights, powers and remedies conferred upon or reserved to the Company, as lessor, by the Building Lease, either in the name of the Company or otherwise, as the Beneficiary shall deem best. Upon every such entry, the Beneficiary may collect the rents, issues, profits, revenues and other income of the Property and apply the same, after payment

of all necessary charges and expenses, to the payment of all sums secured hereby. Also, without limiting the generality of the foregoing, the Beneficiary may, to the extent permitted by law, exercise the power of sale herein provided for. Any sale of the Property pursuant to such power of sale shall be held on the property or, to the extent permitted by law, at such place as shall be fixed by the Beneficiary in the notice of sale.

SECTION 17.2. *Waiver of Redemption, etc.; Rights.* To the full extent that they may lawfully do so, the Company and the Bank hereby waive any and all rights of redemption from any sale under any order or decree of foreclosure of this Deed of Trust or under the power of sale herein provided for, each on its own respective behalf and also on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust, particularly (but without limitation) redemption under the Act of the General Assembly of the State of Arkansas, entitled "An Act to Regulate the Foreclosure of Mortgages," approved February 9, 1933.

To the full extent that they may lawfully so agree, neither the Company nor the Bank will at any time insist upon, plead, claim, or take the benefit or advantage of any appraisement, valuation, stay or extension law now or hereafter in force, in order to prevent or hinder the enforcement of this Deed of Trust or the absolute sale of the Property, of any part thereof, or possession thereof by any purchaser, at any sale under this Deed of Trust. The Grantors also waive, to the extent that they lawfully may, all right to have the property, included in the Property, marshalled upon any foreclosure hereof, and agree that any court having jurisdiction to foreclose this Deed of Trust may order the sale of the Property as an entirety.

If any law in this Section referred to and now in force, of which the Grantors or their successors might take ad-

vantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section.

Section 17.3. *Purchase by Beneficiary.* The Beneficiary, or the then holder of the indebtedness secured hereby may become the purchaser at any sale of the Trust Estate or any part thereof or interest therein, whether such sale is pursuant to foreclosure or power of sale or otherwise.

Section 17.4. *Building Lease Options.* Any sale of the Company Property, or part thereof, whether such sale is pursuant to foreclosure or power of sale or otherwise, shall be subject to the Building Lease; provided, however, that any such sale shall constitute a perpetual bar to any and all rights or options of the Lessee in said lease to purchase the Company Property, or part thereof, and the Bank, as Lessee in said lease, specifically agrees that the purchaser at such sale shall acquire the Company Property, or part thereof purchased, free and clear of any and all such rights and options.

ARTICLE XVIII

Power of Sale

Section 18.1. Upon an Event of Default, the Trustee may sell, assign, transfer and deliver the whole or any part of the Trust Estate or any interest in any part thereof at any private sale or at public auction, with or without demand, advertisement or notice of the time or place of sale or adjournment thereof or otherwise, for cash, on credit, or for other property at such price or prices and on such terms as the Trustee in his uncontrolled discretion may determine. The Grantors irrevocably appoint the Trustee as their true and lawful attorney to act in their name for the purpose of effectuating any sale, assignment, transfer or delivery for the enforcement of this Deed of Trust,

whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such deeds and other instruments as the Trustee may consider necessary. The Beneficiary may be a purchaser of the Trust Estate or any part thereof at any such sale and may apply upon the purchase price the indebtedness secured hereby owing, and any such purchaser shall thereby acquire good title to the property purchased.

ARTICLE XIX

Application of Proceeds of Sale

Section 19.1. The proceeds of any sale of the Trust Estate or any part thereof or interest therein, whether pursuant to foreclosure or power of sale or otherwise, together with any other money at the time held by the Trustee as part of the Trust Estate, shall be applied to pay:

First: The costs and expenses of the sale and of any receiver of the Trust Estate.

Second: Any indebtedness secured by this Deed of Trust and at the time due and payable, other than indebtedness with respect to the Note.

Third: All amounts of principal, premium, if any, interest and other amounts at the time due and payable on the Note; and if such funds shall be insufficient to pay in full the amount so due and unpaid on the Note, then first to the payment of interest thereon, second to the payment of principal and premium, if any, at the time due and payable thereon, and third to the payment of any other amounts at the time due and payable on the Note.

Fourth: The balance shall be paid seventy-five (75%) per cent to the Company, its successors and assigns, and twenty-five (25%) per cent to the Bank, its successors and assigns.

ARTICLE XX

Company Obligations with Respect to Building Lease

Section 20.1. The Company shall perform or cause to be performed all of the terms, covenants and conditions on its part as Lessor to be performed under the Building Lease; shall promptly notify the Beneficiary in writing of (1) the occurrence of any default, of which the Company has knowledge, on the part of the Bank in the observance of or performance of any of the terms, covenants, and conditions on the Bank's part to be performed under the Building Lease, and (2) the giving of any notice of default under the Building Lease by the Company as provided therein; and shall, whenever requested by the Beneficiary, at the sole cost and expense of the Company, take all such action as may be so requested to enforce or secure the performance of any term, covenant or condition of the Building Lease to be performed by the Bank, and to exercise any right of the Company as Lessor under the Building Lease, or create or consent to the creation or existence of any mortgage, deed of trust or other lien to secure the payment of indebtedness upon the leasehold estate created by the Building Lease, or any part thereof, unless the Beneficiary consents thereto, or unless specifically permitted therein.

ARTICLE XXI

Cost of Collection

Section 21.1 If the Company shall fail to pay any principal of or premium, if any, or interest on the Note, the Company shall pay the Beneficiary such further amount as shall be sufficient to cover the cost and expense of collection, including, reasonable attorneys' fees to the extent permitted by law.

ARTICLE XXII

No Waiver

Section 22.1 Neither failure nor delay on the part of the Beneficiary or the Trustee to exercise any right, remedy, power or privilege provided for herein or by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

ARTICLE XXIII

Release

Section 23.1. If the Company shall pay the principal of and premium, if any, and interest on the Note in accordance with the terms thereof and all other sums payable hereunder by the Company and shall comply with all of the terms hereof and of the Note, then this Deed of Trust shall be null and void and of no further force and effect and shall be released by the Trustee at the expense of the Grantors upon their written request.

ARTICLE XXIV

General Provisions

Section 24.1 *Successors.* All the covenants and provitions in this Deed of Trust by or for the benefit of the parties hereto shall bind and inure to the benefit of their respective successors and assigns.

Section 24.2. *Applicable Law.* This Deed of Trust shall be construed and enforceable in accordance with the laws of the State of Arkansas.

Section 24.3. *Counterparts.* This Deed of Trust may be executed in any number of counterparts, and each of

such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 24.4. *Headings.* The headings in this Deed of Trust are for purposes of reference ony and shall not limit or define the meaning hereof.

IN WITNESS WHEREOF, the Grantors have caused this Deed of Trust to be duly executed, all as of the day and year first above written.

FRANK LYON COMPANY

By .....
President

Attest:

.....
Secretary

WORTHEN BANK & TRUST COMPANY

By .....
President

Attest:

.....
Secretary

TRUSTEE:

.....
Darrell D. Dover

(Acknowledgements Omitted in Printing)

SCHEDULE I OF DEED OF TRUST

The land referred to as Tract A in the Deed of Trust dated as of December 1, 1969, between Worthen Bank & Trust Company and Frank Lyon Company as Grantors and Darrell D. Dover as Trustee, to which this Schedule I is attached, consists of a parcel of land in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

> BEGINNING at the Southwest corner of Lot 6, Block 84, Original City of Little Rock; thence northerly 160.33 feet along the West side of Lots 6, 5, 4 and 3 to a point 139.67 feet South of the Northwest corner of said Block 84; thence easterly 140.0 feet to a point on the East side of Lot 3, located 139.67 feet South of the Northeast corner of Lot 1; thence 43.88 feet in a southerly direction along the East side of Lots 3 and 4; thence easterly 160.0 feet to a point on the East side of Lot 9, located 116.45 feet North of the Southeast corner of Lot 7; thence southerly 116.45 feet along the East side of Lots 9, 8 and 7 to the Southeast corner of Lot 7; thence westerly 300.0 feet long the South side of Lots 7 and 6 to the point of beginning,

Subject, however, to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of City of Little Rock Arkansas, to Worthen Bank & Trust Company.

LESS AND EXCEPT —

(a) the air space above the North 29.33 feet of Tract A beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding,

however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Bank & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

SCHEDULE II OF DEED OF TRUST

The land referred to as Tract B in the Deed of Trust dated as of December 1, 1969, between Frank Lyon Company and Worthen Bank & Trust Company as Grantors and Darrell D. Dover as Trustee, to which this Schedule II is attached, consists of a parcel of land in Little Rock, Pulaski County, Arkansas, and is more particularly described as follows:

BEGINNING at the Northwest corner of Lot 1, Black 84, Original City of Little Rock; thence easterly 140.0 feet along the North side of Lot 1 to the Northeast corner of Lot 1; thence southerly 139.67 feet along the East side of Lots 1, 2, and 3; thence westerly 140.0 feet to a point on the West side of Lot 3, located 139.67 feet south of the Northwest corner of Lot 1, thence northerly 139.67 feet along the west side of Lots 3, 2 and 1 to the point of beginning;

SUBJECT, HOWEVER, To a perpetual surface easement for use by the public as a passageway, described in an Agreement between Worthen Bank & Trust Company and Union National Bank of Little Rock, Trustee, and Charles M. Taylor, Trustee, dated April 14, 1967, and recorded July 5, 1967, in Book 1001 at Pages 187-194, inclusive, of the records of the Circuit Clerk of Pulaski County, Arkansas, and further described in an Agreement dated July 26, 1967, filed for record August 2, 1967, and recorded in Book 1004 at Page 515 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by and between Worthen Bank & Trust Company and Union National Bank of Little Rock and William L. Terry, as Co-Trustees under "The Terry Trust," and Adolphine Fletcher Terry; said easement covering the north 20 feet of the South 25.17 feet of Tract B plus the turning radius described in said Agreement.

Further subject to certain restrictions, conditions and reservations contained in a Special Warranty Deed dated September 15, 1967, filed for record September 15, 1967, and recorded in Book 1009 at Page 537 of the records of the Circuit Clerk of Pulaski County, Arkansas, executed by Housing Authority of City of Little Rock, Arkansas, to Worthen Bank & Trust Company.

TOGETHER WITH —

(a) the air space above the North 29.33 feet of Tract A (described in Schedule I hereof) beginning at an elevation of 318.23 feet above sea level and extending upward therefrom; excluding, however, the portion of said air space to be occupied by the elevator shaft and stair well shown on the plans and specifications for construction of the improvements on Tract A, prepared by the architectural firm of Erhart, Eichenbaum, Rauch & Blass of Little Rock, Arkansas, and

(b) an easement retained by Worthen Banuk & Trust Company, its successors and assigns forever, upon the North 29.33 feet of Tract A to construct, repair and replace structural supports, columns or foundations thereon, together with the right of ingress and egress for such purposes; provided that Worthen Bank & Trust Company (or its successor in interest) shall repair any damage to improvements on Tract A as a result of the use of this easement and shall indemnify Frank Lyon Company (or its assignee) against any loss or damage caused by the use of this easement.

P. Ex. 28

ASSIGNMENT

This Assignment, dated as of December 1, 1969, is made by Frank Lyon Company, an Arkansas corporation (hereafter called the "Assignor"), having its principal office at West 65th Street and Scott Hamilton Drive, Little Rock, Arkansas, to New York Life Insurance Company, a New York corporation (hereafter called the "Assignee"), having its principal office at 51 Madison Avenue, City, County and State of New York.

For value received, the Assignor hereby grants, bargains, sells, sets over, transfers and assigns to Assignee, its successors and assigns, all of the right, title and interest of the Assignor to Lessor in, to and under that certain lease as of May 1, 1968 (the "Building Lease"), between the Assignor as Lessor and Worthen Bank & Trust Company of Little Rock, Arkansas, as Lessee covering, among other things, (i) all buildings, structures and other improvements now or hereafter located on certain real property referred to therein as Tract A and described in Schedule I thereto, together with all fixtures thereon, and (ii) the interest of the Assignor as Lessee in, to and under that certain lease dated as of May 1, 1968, (the "Ground Lease"), between Worthen Bank & Trust Company as Lessor and the Assignor as Lessee, covering Tract A described in said lease. The Building Lease is recorded at Book 1213, Page 281, of the records of the Circuit Clerk of Pulaski County, Arkansas. The Ground Lease is recorded at Book 1213, Page 325, of the records of the Circuit Clerk of Pulaski County, Arkansas.

The foregoing Assignment is for the purpose of securing (a) payment of all sums now or at any time hereafter due to the Assignee and secured by a certain deed of trust dated as of December 1, 1969, (hereinafter called the "Deed of Trust"), executed by the Assignor and Worthen

Bank & Trust Company, as Grantors to a trustee for the benefit of the Assignee and to be recorded immediately after the recording of this Assignment, and (b) performance and discharge of each obligation, covenant and agreement of the Assignor contained herein or in the Deed of Trust or the secured promissory note referred to in and secured by the Deed of Trust.

Except as and to the extent that the Assignee may from time to time otherwise direct, the Assignor hereby irrevocably directs Worthen Bank & Trust Company to pay to the Assignee all installments of Basic Rent and all Additional Rent payable under the Building Lease.

The Assignee agrees that upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Deed of Trust, this Assignment shall become and be void and of no effect.

The Assignor agrees that:

1. The Assignor will:

(a) perform or cause to be performed all of the terms, covenants and conditions on its part to be performed under the Building Lease;

(b) promptly notify the Assignee in writing of the occurrence of any default, of which the Assignor has knowledge, in the observance or performance of any of the terms, covenants and conditions to be performed under the Building Lease, and the giving of any notice of default under such lease;

(c) whenever requested by the Assignee, at the sole cost and expense of the Assignor, take all such action as may be so requested to enforce or secure the performance of any term, covenant or condition of the Building Lease, and to exercise any right of the Assignor under said lease;

(d) not terminate (except as permitted pursuant to Article XX of the Building Lease), modify or accept a surrender of, or offer or permit any termination, modification or surrender of, the Building Lease, unless the Assignee consents in writing thereto.

2. The rights assigned hereunder include all the Assignor's right and power to modify the Building Lease or to terminate (except as permitted pursuant to Article XX of the Building Lease) or accept a surrender of said lease or to waive or release any person from the performance or observance of and obligation or condition thereof.

3. If the Assignor shall fail to perform any of its covenants in this Assignment the Assignee may at any time and from time to time at its discretion makes advances to effect performance of any such covenant on behalf of the Assignor, and all such moneys advanced by the Assignee, together with interest at the rate of ten per cent (10%) per annum, shall be repaid by the Assignor upon demand and shall be secured hereby and by the Deed of Trust but no such advance shall relieve the Assignor from defaults hereunder.

4. The Assignee may, to the extent permitted by law, in case one or more of the Events of Default described in the Deed of Trust shall happen and shall not have been remedied, enter into and upon all or any part of the premises covered under the Building Lease and may exclude the Assignor and all persons claiming under the Assignor, wholly or partly therefrom; and holding the same, the Assignee may use, operate, manage and control said premises and conduct the business thereof, and exercise all rights and powers of the Assignor, including all the rights, powers and remedies conferred upon or reserved to the Assignor by the Building Lease, either in the name of the Assignor or otherwise, as the Assignee shall deem best.

5. The Assignee shall not be obligated to perform or discharge any obligation under the Building Lease or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Assignee against and hold it harmless from any and all liability, loss or damage which it may or might occur under said lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of said lease. If the Assignee should incur any such liability, loss or damage under said lease or under or by reason of this Assignment or in defense against any such claims or demands, the amount thereof including costs, expenses and reasonable attorneys' fees, together with interest thereon at ten per cent (10%) per annum, shall be secured hereby, and the Assignor shall reimburse the Assignee therefor immediately upon demand.

6. This Assignment shall inure to the benefit of the successors and assigns of the Assignee and bind and inure to the benefit of the successors and assigns of the Assignor.

In Witness Whereof, the Assignor has caused this Assignment to be duly executed, all as of the day and year first above written.

Frank Lyon Company
By _____
President

_____
Attest:

Secretary

(Acknowledgment Omitted in Printing)

P. Ex. 29

Consent and Agreement

This Consent and Agreemen' is made by Worthen Bank & Trust Company (hereinafter called the "Bank") in order to comply with the condition set forth in paragraph 4I of an agreement (hereinafter called the "Note Purchase Agreement") dated as of May 1, 1968, between Frank Lyon Company (hereinafter called the "Company") and New York Life Insurance Company (hereinafter called the "Purchaser"), and in consideration of, and as an inducement to, the purchase by the Purchaser of the 6¾% 25-year Secured Note (hereinafter called the "Note") of the Company as provided in the Note Purchase Agreement:

1. The Bank represents and warrants to the Purchaser on and as of the closing date (as defined in paragraph 3 of the Note Purchase Agreement):

(a) The Bank is a banking corporation duly incorporated and validly existing under the laws of the State of Arkansas and is in good standing in said State.

(b) The Bank has heretofore delivered to the Purchaser copies of comparative statements of the resources and liabilities of the Bank for the fiscal years ending December 31, 1962, through December 31, 1968. Such financial statements are complete and correct and have been prepared in accordance with sound accounting principles consistently followed throughout the periods indicated. Such comparative statements accurately represent the financial condition of the Bank as at the respective dates indicated. Since December 31, 1968, there has been no material adverse change in the resources, liabilities, condition (financial or other) or business of the Bank from that set forth in the financial statement as at that date.

(c) There are no material actions, suits or proceedings pending or to the knowledge of the Bank threatened against or affecting the Bank or its property, at law or in equity or before or by any Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (except actions, suits or proceedings of the character normally incident to the kind of business conducted by the Bank which, if adversely determined, would not materially impair the Bank's right to carry on its business substantially as now conducted or proposed to be conducted); and the Bank is not in default with respect to any material order, writ, injunction, decree or demand of any court or Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

(d) The consummation of the transactions contemplated in the Note Purchase Agreement and performance of this Consent and Agreement and (as defined in paragraph 1 of the Note Purchase Agreement) the Deed of Trust, the Assignment, the Ground Lease, and the Building Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument to which the Bank is a party or by which the Bank or its properties may be bound or affected.

(e) Since December 31, 1966, neither the business nor properties of the Bank have been materially affected in any way as a result of any fire, explosion, accident, flood, windstorm, earthquake, strike, lockout, embargo, or act of God or the public enemy.

(f) The Bank is duly authorized to enter into the Building Lease and to conduct its business in the Building (as defined in paragraph 1 of the Note Purchase Agreement) and to sublease any part of the Building not required for its banking business.

(g) The Bank is not a "national" of "any designated foreign country" (or a person defined as a "designated foreign country") within the definitions in the Foreign Assets Control Regulations or the Cuban Assets Control Regulations of the United States Treasury Department, 31 C.F.R., Subtitle B, Chapter V, as amended, or any regulation or ruling issued thereunder.

(h) The Bank is not a party to or bound by any contract made otherwise than in the ordinary course of business and which in the opinion of the Bank is a burdensome contract materially and adversely affecting the business, operations or financial condition of the Bank.

(i) The Bank has not, either directly or through any agent, offered the Note or any similar security for sale to, or solicited any offer to buy the Note from, or otherwise approached or negotiated in respect thereof with, any person or persons other than the Purchaser, and the Bank agrees that neither it nor any agent on its behalf will sell or offer the Note to, or solicit any offer to buy the Note from, or otherwise approach or negotiate in respect thereof with, any person or persons whomsoever so as thereby to render the issuance and/or sale of the Note a violation of Section 5 of the Securities Act of 1933, as amended.

(j) All representations and warranties made by the Bank herein and in any certificates delivered pursuant hereto shall survive the execution of the Deed of Trust by the Bank and the sale and delivery of the Note by the Company to the Purchaser provided for in the Note Purchase Agreement, and shall be deemed to have relied on by the Purchaser notwithstanding any inquiry or investigation which the Purchaser may make in respect to the truth or accuracy of representations and warranties.

2. Supplementing paragraph 4 of the Note Purchase Agreement, the obligation of the Purchaser to purchase and pay for the Note shall be subject to the following additional conditions, all of which the Bank agrees to perform on or prior to the closing date:

(a) The Bank shall have delivered to the Purchaser copies of comparative statements of the resources and liabilities of the Bank for the fiscal years ending December 31, 1967, and December 31, 1968. Said comparative statements shall be correct and complete and truly represent the financial condition of the Bank as at the respective dates indicated and the results of the operations of the Bank for the respective periods indicated, and shall have been prepared in accordance with sound accounting practice consistently maintained throughout the periods indicated. Such comparative statements shall show no material adverse changes in the financial condition of the Bank from that set forth in the financial statement of the Bank as at December 31, 1966, heretofore delivered to the Purchaser and no material adverse changes affecting the operations of the Bank.

(b) The Bank shall have received, in form, scope and substance satisfactory to the Purchaser, the formal approval of the Board of Governors of the Federal Reserve System to the consummation of the transactions contemplated by that certain agreement (hereinafter called the "Sales Agreement") dated as of May 1, 1968, between the Company and the Bank, and of the financing and leasing transactions contemplated by the Note Purchase Agreement, to the extent that such approval is required, or proof satisfactory to the Purchaser that no such approval is required; and a copy of such approval, certified as a true copy by the President or a Vice President of the Bank, or such proof that no such approval is required, shall have been furnished to the Purchaser.

(c) The Bank shall have received, in form, scope and substance satisfactory to the Purchaser, the formal approval of the Arkansas Bank Commissioner to the consummation of the transactions contemplated by the Sales Agreement and of the financing and leasing transactions contemplated by the Note Purchase Agreement to the extent that such approval is required, or a written ruling of said Commissioner that no such approval is required; and a copy of such approval or of such ruling, certified as a true copy by the President or a Vice President of the Bank, shall have been furnished to the Purchaser.

(d) The Bank shall have a good and clear record and marketable title in fee simple absolute to Tracts A and B (as described in the Deed of Trust) and the Garage Facility (as defined in paragraph 1 of the Note Purchase Agreement) free and clear of all liens, charges and encumbrances prior to or on a parity with the lien of the Deed of Trust, except:

(i) the matters set forth Schedules I and II of the Deed of Trust;

(ii) Permitted Encumbrances, as defined in Section 1.1(10) of the Deed of Trust; and

(iii) the Building Lease.

(e) The construction of the Garage Facility shall have been completed and Cotham, Wyman & Howland, Certified Public Accountants, shall have certified to the Purchaser the Total Cost of the Mortgaged Property (as hereinbelow defined) in reasonable detail and the amount thereof shall not be less than $9,500,000. For all purposes of this Consent and Agreement. the "Total Cost of the Mortgaged Property" shall mean the sum of

(i) the Total Cost of the Building, as certified to the Purchaser by Cotham, Wyman & Howland as pro-

vided in paragraph 4D of the Note Purchase Agreement; plus

(ii) the aggregate of the costs reasonably and necessarily incurred and paid by the Bank in connection with the acquisition of Tracts A and B and charged and properly chargeable to the property accounts of the Bank in accordance with generally accepted accounting principles; plus

(iii) the aggregate of the costs reasonably and necessarily incurred and paid by the Bank in connection with said construction of the Garage Facility and charged and properly chargeable to the property accounts of the Bank in accordance with generally accepted accounting principles.

Compliance with the provisions of this Subsection (e) shall be established by such certificates of architects, engineers and contractors and officers of the Bank as shall be satisfactory in form and substance to the Purchaser. Before accepting any certificates as evidence of compliance with the provisions of this Subsection, the Purchaser in its discretion may make any further inquiry or investigation into the truth or accuracy of the matters evidenced by any certificate furnished to the Purchaser as it may deem proper. If the Purchaser shall determine to make any such further inquiry or investigation, it shall be entitled to examine the books and records of the Bank, personally or by agent or attorney, and unless satisfied with or without such examination of the truth or accuracy of the statements contained in such certificates, it shall be under no obligation to accept such certificates as evidence of such compliance.

(f) The Ground Lease, the Building Lease and the Deed of Trust shall have been duly executed and delivered by the Bank substantially in the forms of Exhibits D, E and B, respectively, to the Note Purchase Agreement, subject, however, to such changes as shall be mutually agreed upon by the Company, the Bank and the Purchaser and their respective counsel.

(g) The Purchaser shall have received from Messrs. Wright, Lindsey & Jennings, counsel for the Bank, an opinion in scope and substance satisfactory to the Purchaser and its special counsel as to all matters specified in paragraph 4N of the Note Purchase Agreement, except N(1), N(3), and N(6).

3. So long as the Purchaser shall hold the Note, the Bank will furnish to the Purchaser as soon as available, and in any event within 120 days after the end of each fiscal year, beginning with the fiscal year ending December 31, 1969, two copies of its balance sheet as of the end of such fiscal year, setting forth in comparative form the corresponding figures as at the end of the previous fiscal year, and two copies of its income and surplus statement for such fiscal year, setting forth in comparative form the corresponding figures as at the end of the previous fiscal year. Such balance sheets and statements shall be prepared in reasonable detail in accordance with good accounting practice, and shall be accompanied by a report and opinion of the auditor of the Bank or of independent public accountants. Such reports and opinions shall include a statement that such auditor or such accountants, as the case may be, in making the audit necessary for such report, have obtained no knowledge of any Event of Default, as defined in Section 17.1 of the Deed of Trust, or of any event which, with the lapse of time or with the notice and lapse of time specified in said Section 17.1 would become an Event of Default thereunder, or if such auditor or accountants shall have obtained knowledge of any such Event of Default or other event, they shall disclose in such statement the Event of Default or other events and the nature thereof. Such report of such auditor or accountants shall also include such other reports, schedules or information as

may be furnished to the Bank by such auditor or accountants in connection with such audit.

It is understood that the Purchaser shall be free to deliver copies of the financial statements referred to in this Consent and Agreement, as well as any other information or reports furnished to the Purchaser pursuant hereto, to any regulatory body or commission to whose jurisdiction the Purchaser may be subject.

4. So long as the Purchaser shall hold the Note, it shall have the right to visit and inspect any of the properties of the Bank subject to the lien of the Deed of Trust, to examine the books of account of the Bank and to discuss the affairs, finances and accounts of the Bank with, and to be advised as to the same by, the officers of the Bank, all at such reasonable times and intervals as the Purchaser may desire.

5. The Bank acknowledges notice of, and receipt of an original counterpart of, the Assignment and hereby consents to the Assignment, and agrees that payment of all Basic Rent due and to become due under the Building Lease will be made directly to the Purchaser so long the the Assignment shall continue in force, and, during the period aforesaid, the Bank will not seek or assert any reduction or abatement of any of its obligations under the Building Lease, whether by set-off, counterclaim, recoupment or otherwise.

So long as the Note is outstanding, the Bank will not, without the written consent of the holder thereof, terminate, modify or surrender or offer or permit any termination, modification or surrender of the Building Lease except upon the conditions and to the extent provided in Article XX of the Building Lease.

6. All communications provided for herein shall be delivered or mailed addressed as follows (or at such other

address as may have been furnished in writing to the Purchaser or the Bank):

To the Bank:

Worthen Bank & Trust Company
Capitol and Center Streets
Little Rock, Arkansas 72201

To the Purchaser:

New York Life Insurance Company
Attention: Vice President in Charge
of Real Estate and Mortgage
Loans
51 Madison Avenue
New York, New York 10010

7. All covenants and provisions of this Consent and Agreement shall bind and inure to the benefit of the Bank and the Purchaser and their respective successors or assigns.

IN WITNESS WHEREOF, the Bank has caused this Consent and Agreement to be duly executed this 1st day of December, 1969.

WORTHEN BANK & TRUST COMPANY

By _____
President

Attest:

_____
Secretary

P. Ex. 32

FRANK L N COMPANY
DEPT OF , CE BOX 4408
LITTLE ROCK ARKANSAS 72204

00104483
3369

399

PLEASE NOTIFY US OF ANY CHANGE IN YOUR ADDRESS

DEBITS	CREDITS	DATE	BALANCE
BALANCE BROUGHT FORWARD —		9 02 69	641,100.00
697,000.00		9 05	100.00
160,000.00	160,000.00	9 24	160,100.00
		9 25	100.00

NO OF DEBITS 2 NO OF CREDITS 1 DATE RENDERED 9 30 69 27

PLEASE INFORM US IMMEDIATELY OF ANY DISCREPANCIES YOU FIND GIVING FULL DETAILS AND YOUR ACCOUNT NUMBER

LAST AMOUNT ABOVE IS YOUR FINAL BALANCE ON DATE RENDERED

KEY TO SYMBOLS
A—CHARGE MEMO
B—CREDIT MEMO (REFER TO ADVICE)
C—CERTIFIED CHECK (ENCLOSED OR OUTSTANDING)
D—AUTHORIZED DEBIT
E—AUTHORIZED CREDIT
L—LIST
M—MAIL DEPOSIT
N—INDIRECT DRAWING
R—RETURNED ITEM
S—SERVICE AND OR MAINTENANCE CHARGE
E.O.M. BAL.—END OF MONTH BALANCE

No 13 August 29 19 69

Pay to the order of Frank Lyon Company $ 697,000.00

Six Hundred Ninety Seven Thousand Dollars and no/100 --- Dollars

FIRST NATIONAL CITY BANK
399 Park Avenue
New York N.Y.

Trf. of Funds

FRANK LYON COMPANY

:021000068: 00104483 0006700000

No 14 September 19 19 69

Pay to the order of Frank Lyon Company $ 160,000.00

One Hundred Sixty Thousand Dollars and no/100 ---------- Dollars

FIRST NATIONAL CITY BANK
399 Park Avenue
New York N Y

Transfer of Funds

Ralph Cotham

:021000068: 00104483 0016000000

CREDIT TICKET

FIRST NATIONAL CITY BANK
MORTGAGE AND REAL ESTATE LOAN DEPT.
399 PARK AVENUE, NEW YORK, N. Y. 0022

LOAN MADE 2

DATE September 24, 19

ACCOUNT NUMBER	DESCRIPTION				AMOUNT
36 56658 601	Advance Frank Lyon Company	D	8 1/2	160,000.00	160,000.00

CREDIT
Frank Lyon Company
65th & Scott Hamilton Drive
Little Rock, Arkansas, 72206
Att: Mr. Ralph Cotham, Treasurer

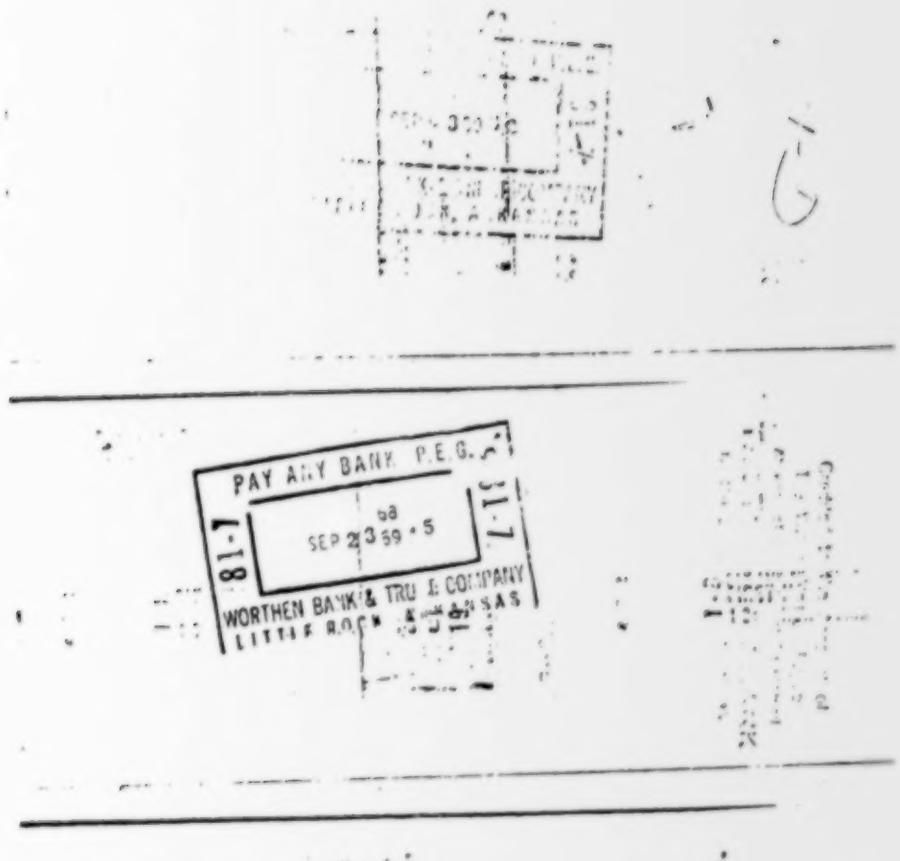
0010-4483

XX

POST
MORTGAGE AND REAL ESTATE LOAN DEPT.

:00104483 27:00160000000

BEST COPY AVAILABLE



P. Ex. 33

Frank Lyon Company and Subsidiaries

Consolidated Balance Sheet
December 31, 1969 and 1968

Assets

	1969	1968
Current Assets		
Cash	$ 1,035,661	$ 1,054,700
Short-term investments	846,859	747,830
Receivables, net	2,902,121	2,983,109
Inventories	2,573,417	2,322,879
Prepaid expenses	134,840	11,327
Total current assets	$ 7,492,898	$ 7,119,845
Investments		
Cash surrender value of life insurance	$ 0	$ 60,114
Stock in unconsolidated subsidiaries	6,110,610	2,280,278
Worthen Building	7,612,570	2,674,290
Total investments	$13,723,180	$ 5,014,682
Fixed Assets		
Property and equipment, at cost	$ 209,517	$ 180,433
Accumulated depreciation	(111,481)	(103,330)
Net fixed assets	$ 98,036	$ 77,103
Other Assets		
Receivables, due after one year	$ 9,126	$ 12,612
Deposits and memberships	1,420	1,320
Organization expense	0	50
Total other assets	$ 10,546	$ 13,982
Total Assets	$21,324,660	$12,225,612

See accompanying note to financial statements.

Frank Lyon Company and Subsidiaries

Consolidated Balance Sheet
December 31, 1969 and 1968

Liabilities and Stockholders' Equity

	1969	1968
Current Liabilities		
Accounts payable	$ 2,831,552	$ 1,892,137
Notes payable within one year	1,069,527	97,500
Accrued expenses	561,639	432,593
Taxes payable	41,280	309,272
Total current liabilities	$ 4,503,998	$ 2,731,502
Long-Term Debt		
Notes payable after one year	$11,941,986	$ 5,675,439
Deferred Liabilities		
Federal Income tax	$ 228,411	$ 0
Advertising and promotion funds	21,232	0
Reserve for losses on repurchase agreements	37,144	0
Total deferred liabilities	$ 286,787	$ 0
Stockholders' Equity		
Common stock, without par value, authorized 7,000 shares, issued 5,374 at $100 stated value per share	$ 537,400	$ 537,400
Paid in capital	58,086	58,086
Retained earnings (Exhibit C)	4,061,130	3,295,560
Treasury stock, at cost, 153 shares at 12-31-69 and 171 shares at 12-31-68	(64,727)	(72,375)
Total stockholders' equity	$ 4,591,889	$ 3,818,671
Total Liabilities and Stockholders' Equity	$21,324,660	$12,225,612

P. Ex. 34

Frank Lyon Company and Subsidiaries

Consolidated Statement of Income
Years ended December 31, 1969 and 1968

	1969		1968	
	Amount	% of Sales	Amount	% of Sales
Sales	$18,862,859	100.0	$19,154,673	100.0
Cost of sales	15,861,134	84.1	16,016,414	83.6
Gross profit	$ 3,001,725	15.9	$ 3,138,259	16.4
Operating expenses (Schedule 1)	2,035,870	10.8	1,956,138	10.2
Operating profit	$ 965,855	5.1	$ 1,182,121	6.2
Other Income and Expenses				
Discounts earned	$ 21,039	.1	$ 19,957	.1
Bad debts recovered	6,387	.0	13,777	.0
Interest income	83,524	.4	107,841	.6
Interest expense	(45,284)	(.2)	(171,416)	(.9)
Contributions	(41,536)	(.2)	(45,341)	(.2)
Miscellaneous	64,506	.4	39,856	.2
Net other income and expenses	$ 88,636	.5	$ (35,326)	(.2)
Operating income before taxes	$ 1,054,491	5.6	$ 1,146,795	6.0
Income Taxes				
State	$ 8,152	.0	$ 40,517	.2
Federal	496,010	2.7	547,785	2.9
Total income taxes	$ 504,162	2.7	$ 588,302	3.1
Net Operating Income	$ 550,329	2.9	$ 558,493	2.9
Net Income from Investments	260,031	1.4	0	.0
Net income (to Exhibit C)	$ 810,360	4.3	$ 558,493	2.9
Net income per share	$ 155		$ 108	

See accompanying notes to financial statements

FRANK LYON COMPANY AND SUBSIDIARIES

Consolidated Statement of Operating Expense
Years ended December 31, 1969 and 1968

	1969		1968	
	Amount	% of Sales	Amount	% of Sales
Salaries and wages	$ 596,662	3.3	$ 548,620	3.0
Salesmen's earnings	449,296	2.5	423,455	2.2
Bonuses accrued	200,969	1.2	221,874	1.2
Overtime pay	7,722	.0	6,662	.0
Payroll taxes	35,891	.2	34,549	.2
Employee insurance	13,717	.1	9,773	.1
Pension plan	96,010	.5	73,000	.4
Audit, legal and collection	23,241	.1	11,536	.1
Automobile expenses	7,172	.0	8,958	.0
Bad debts	(13,149)	(.1)	19,715	.1
Bank charges	515	.0	635	.0
Data processing expense	108,625	.6	98,817	.5
Depreciation	18,060	.1	15,914	.0
Directors' fees	7,200	.0	6,000	.0
Dues and subscriptions	11,598	.1	12,295	.1
Employees' education expense	1,149	.0	781	.0
Entertainment	4,214	.0	476	.0
Freight	24,263	.1	34,932	.2
Insurance, general	19,530	.1	16,363	.1
Insurance, officers' life	5,812	.0	4,481	.0
Maintenance	17,753	.1	16,703	.1
Merchandise repairs	3,978	.0	2,414	.0
Miscellaneous	9,578	.1	5,752	.0
New employee expense	2,218	.0	1,590	.0
Overhead recovery	(33,599)	(.2)	(13,128)	(.1)
Outside labor	3,504	.0	3,228	.0
Postage	14,674	.1	15,969	.1
Rent, buildings	209,413	1.1	188,122	1.0
Rent, equipment	210	.0	233	.0
Service, net	2,868	.0	6,245	.0
Supplies	25,885	.1	26,244	.1
Telephone and telegraph	45,156	.2	45,415	.2
Taxes and licenses	61,386	.3	59,526	.3
Travel	28,823	.1	27,544	.2
Truck expense	3,231	.0	2,014	.0
Utilities	22,355	.1	19,431	.1
Totals (to Exhibit B)	$2,035,870	10.8	$1,956,138	10.2

P. Ex. 35

GUARANTY

May 14, 1968

First National City Bank
399 Park Avenue
New York, New York 10022

Gentlemen:

Reference is made to the Building Loan Agreement (the "Loan Agreement") dated May —, 1968, between you and Frank Lyon Company (the "Borrower"), with respect to a proposed construction loan (the "Construction Loan") in the amount of Seven Million Dollars ($7,000,000.00), to be made by you to the Borrower in connection with the construction of a 24-story bank and office building (the "Worthen Building"), on a parcel of land located at Center and Capitol Streets, Little Rock, Arkansas (the "Premises").

The undersigned (the "Guarantor) acknowledges that you are relying upon the Note Purchase Agreement of New York Life Insurance Company with the Borrower dated as of May 1, 1968 (the "Note Purchase Agreement"), to make a permanent loan (the "Permanent Loan") on the Worthen Building and a certain parking facility, also to be constructed on the Premises (the "Parking Facility"), in compliance with the terms and conditions of the Note Purchase Agreement.

In order to induce you to enter into the Loan Agreement and to make the Construction Loan thereunder to the Borrower, and in consideration thereof, the undersigned hereby irrevocably guarantees to you and your successors and assigns, that construction of the Worthen Building and of Parking Facility will be fully completed by December 1st, 1969, in accordance with the plans and specifications referred to in the Loan Agreement and in

compliance with all of the provisions of the Loan Agreement and the Note Purchase Agreement, free from all liens and claims which may be filed or made for performing work and labor thereon or furnishing materials therefor, or both, and further guarantees the full compliance of all terms, conditions and agreements of the Loan Agreement on its part to be observed.

The Guarantor further agrees that if for any reason whatsoever the Construction Loan is not paid off in full by December 1st, 1969, a new Building Lease of the Worthen Building will be entered into between the Borrower, as lessor, and the Guarantor herein, as lessee, on terms and conditions to be agreed upon by you, which will provide sufficient rentals to amortize fully the principal and interest of a permanent loan, in accordance with its terms, which Guarantor hereby agrees are to be acceptable to you.

The Guarantor further guarantees to occupy at least 110,000 square feet of interior space in the building and that such space will be finished for occupancy by December 1, 1969.

Guarantor further guarantees that prior to the first advance of funds hereunder, the Lender is to be supplied with opinions of Guarantor's attorneys, satisfactory to Lender, as to the following matters:

(a) An opinion asserting Guarantor's power to mortgage its property to secure another's debt.

(b) An opinion to the effect that Lender's making of the Loan will not constitute "doing business" in Arkansas or violate any other local statute.

(c) An opinion stating that Guarantor has the power to guaranty completion of the building and that such guaranty will not constitute indebtedness or liability of Guarantor under any applicable statute limiting the indebtedness or liability which may be legally incurred or assumed by Guarantor, or that if it does constitute such indebtedness or liability, it will not cause Guarantor to exceed the statutory limits.

(d) An opinion to the effect that the entire transaction will not result in Guarantor's violating any statutory limitation on investment in bank premises or other real property.

Any changes or alterations which may be made in the terms of the Loan Agreement or the giving of any extension of time for the performance of the Loan Agreement or any other forbearance on your part to the Borrower, shall not in any way release the Guarantor herein of the obligations under this guaranty, notice to the Guarantor of any such change, alteration, extension or forbearance being hereby waived.

The Guarantor hereby waives notice of the acceptance hereof and this guaranty shall be binding upon the undersigned, its successors and assigns, and the undersigned represents that it has full legal power under its Certificate of Incorporation and under the laws and statutes of the State of Arkansas to execute this guaranty.

This guaranty may not be modified, discharged or terminated in any manner other than by agreement in writing signed by you and the Guarantor herein.

Very truly yours,

WORTHEN BANK & TRUST COMPANY

By /s/ EDWARD M. PENICK
Edward M. Penick
President

P. Ex. 36

FRANK LYON COMPANY

COMPUTATION OF TAX LOSS ON WORTHEN BUILDING

	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	Total
Rental Income	48,527.01	582,324.12	582,324.12	582,324.12	582,324.12	582,324.12	582,324.12	582,324.12	582,324.12	582,324.12	582,324.12	584,893.55	
Other Deductions	451,666.75												
Interest Expense	40,162.50	478,801.52	471,634.87	463,971.97	455,778.93	447,018.36	437,651.43	427,636.04	416,927.31	405,477.24	393,234.49	380,144.22	
Depreciation—DDB	51,618.79	614,269.78	552,942.51	498,536.65	450,186.74	407,160.58	368,818.99	334,603.45	304,025.71	276,658.68	252,128.58	230,107.80	
Total Deductions	543,448.04	1,093,071.30	1,024,577.38	962,508.62	905,965.67	854,178.94	806,470.42	762,239.49	720,953.02	682,135.92	645,363.07	610,252.02	
Net Loss for Tax Purposes	494,921.03	510,747.18	442,253.26	380,184.50	323,641.55	271,854.82	224,146.30	179,915.37	138,628.90	99,811.80	63,038.95	25,358.47	
48% Tax or (Tax Credit)	(237,562.09)	(245,158.65)	(212,281.56)	(182,488.56)	(155,347.94)	(130,490.31)	(107,590.22)	(86,359.37)	(66,541.87)	(47,909.66)	(30,258.70)	(12,172.06)	
Depreciation—DDB	51,618.79	614,269.78	552,942.51	498,536.65	450,186.74	407,160.58	368,818.99	334,603.45	304,025.71	276,658.68	252,128.58	210,932.17	4,321,882.63
Depreciation—SL	25,808.10	309,697.34	309,697.34	309,697.34	309,697.34	309,697.34	309,697.34	309,697.34	309,697.34	309,697.34	309,697.34	283,889.10	3,406,670.60
Excess Depreciation	25,810.69	304,572.44	243,245.17	188,839.31	140,489.40	97,463.24	59,121.65	24,906.11	(5,671.63)	(33,038.66)	(57,568.76)	(72,956.93)	915,212.03

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	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
Rental Income	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28	613,157.28
Interest Expense	365,180.57	348,013.67	329,658.33	310,032.29	289,047.59	266,610.15	242,619.43	216,967.87	189,540.51	160,214.42	128,858.14	95,331.11	59,483.10
Depreciation—DDB	142,363.75	135,245.56	128,483.28	122,059.12	115,956.12	110,158.35	104,650.44	99,417.92	94,447.02	89,724.67	85,238.44	80,976.51	76,927.69
Total Deductions	507,544.32	488,413.87	458,141.61	432,091.41	405,003.75	376,768.50	347,269.87	316,385.79	283,987.53	249,939.09	214,096.58	176,307.62	136,410.79
Net (Loss) or Gain	105,612.96	124,743.41	155,015.67	181,065.87	208,153.53	236,388.78	265,887.41	296,771.49	329,169.75	363,218.19	399,060.70	436,849.66	476,746.49
×48% = Income Tax	50,694.62	59,876.84	74,407.52	86,911.62	99,913.00	113,466.61	127,625.96	142,450.31	158,001.48	174,344.73	191,549.14	209,687.84	228,838.31

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Rental Income	587,060.84	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00
Interest Expense	21,201.61												
Ground Rent	8,333.33	100,000.00	100,000.00	100,000.00	100,000.00	104,166.37	150,000.00	150,000.00	150,000.00	150,000.00	154,166.67	200,000.00	200,000.00
Depreciation—DDB	73,081.30	69,427.24	65,955.88	62,658.08	59,525.18	56,548.92	53,721.47	51,035.40	48,483.63	46,059.45	43,756.48	41,568.65	39,490.22
Total Deductions	102,616.24	169,427.24	165,955.88	162,658.08	159,525.18	160,715.59	203,721.47	201,035.40	198,483.63	196,059.45	197,923.15	241,568.65	239,490.22
Net Gain or (Loss)	484,444.60	130,572.76	134,044.12	137,341.92	140,474.82	139,284.41	96,278.53	98,964.60	101,516.37	103,940.55	102,076.85	58,431.35	60,509.78
×48% = Income Tax	232,533.41	62,674.92	64,341.18	65,924.12	67,427.91	66,856.52	46,213.69	47,503.01	48,727.86	49,891.46	48,996.89	28,047.05	29,044.69

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FRANK LYON COMPANY

COMPUTATION OF TAX LOSS ON WORTHEN BUILDING

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Rental Income	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00
Ground Rent	200,000.00	200,000.00	204,166.66	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00
Depreciation—DDB	37,515.71	35,639.92	33,857.93	32,165.03	30,556.78	29,028.94	27,577.49	26,198.62	24,888.68	23,644.25	22,462.04	21,338.94	20,271.99
Total Deductions	237,515.71	235,639.992	238,024.59	282,165.03	280,556.78	279,028.94	277,577.49	276,198.62	274,888.68	273,644.25	272,462.04	271,338.94	270,271.99
Net Gain or (Loss)	62,484.29	64,360.08	61,975.41	17,834.97	19,443.22	20,971.06	22,422.51	23,801.38	25,111.32	26,355.75	27,537.96	28,661.06	29,728.01
×48% — Income Tax	29,992.46	30,892.84	29,748.20	8,560.78	9,332.75	10,066.11	10,762.80	11,424.66	12,053.43	12,650.76	13,218.22	13,757.31	14,269.44

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Rental Income	300,000.00	300,000.00	300,000.00	300,000.00	300 000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00
Ground Rent	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00	250,000.00
Depreciation—DDB	19,258.39	18,295.47	17,380.70	16,511.66	15,686.08	14,901.78	14,156.69	13,448.85	12,776.41	12,137.59	11,530.71	10,954.18	10,406.47
Total Deductions	269,258.39	268,295.47	267,380.70	266,511.66	265,686.08	264,901.78	264,156.69	263,448.85	262,776.41	262,137.59	261,530.71	206,954.18	260,406.47
Net Gain or (Loss)	30,741.61	31,704.53	32,619.30	33,488.34	34,313.92	35,098.22	35,843.31	36,551.15	37,223.59	37,862.41	38,469.29	39,045.82	39,593.53
×48% = Income Tax	14,755.97	15,218.17	15,657.26	16,074.40	16,470.68	16,847.14	17,204.79	17,544.55	17,867.32	18,173.96	18,465.26	18,741.99	19,004.89

	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044 11 months
Rental Income	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	300,000.00	275,000.00
Ground Rent	250,000.00	230,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	9,166.67
Depreciation—DDB	9,886.14	9,391.84	8,922.24	8,476.13	8,052.33	7,649.71	7,267.22	6,903.86	6,558.67	6,230.74	5,919.20	5,154.64
	259,886.14	239,391.84	18,922.24	18,476.13	18,052.33	17,649.71	17,267.22	16,903.86	16,558.67	16230.74	15,919.20	14,321.31
Net Gain or (Loss)	40,113.86	60,608.16	281,077.76	281,523.87	281,947.67	282,350.29	282,732.78	283,096.14	283,441.33	283,769.26	284,080.80	260,678.69
×48% = Income Tax	19,254.65	29,091.91	134,917.32	135,131.46	135,334.88	135,528.14	135,711.73	135,886.15	136,051.84	136,209.24	136,358.78	125,125.77

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P. Ex. 37

FEDERAL RESERVE BANK OF ST. LOUIS
P.O. BOX 442
ST. LOUIS, MISSOURI 63166

O. O. WYRICK
VICE PRESIDENT

August 22, 1967

Mr. Edward M. Penick, President
Worthen Bank and Trust Company
P. O. Box 1681
Little Rock, Arkansas 72203

Dear Mr. Penick:

This will acknowledge your letter of August 18, 1967, together with a copy of letter to Mr. H. C. Adams, State Bank Commissioner, requesting approval for the purchase of land for location of a new bank building.

Since the bid of $1,425,299.95 for the land plus the present carrying value of bank premises does not exceed the amount of the bank's capital stock, the approval of the Board of Governors of the Federal Reserve System, under the provisions of Section 24A of the Federal Reserve Act is not required and this Reserve bank will interpose no objection to the proposal. However, if the total investment in the new bank building, including cost of land, plus amount of bank premises now carried on the bank's books will exceed the bank's capital stock ($4,000,000) the investment will require the prior approval of the Board of Governors. Any investment in a real estate holding company holding title to the premises carried on the bank's books plus all indebtedness incurred by the company shall be included in determining the total investment for the purpose of Section 24A.

In the event the bank's investment in connection with the new building program requires the prior approval of

the Board of Governors, a request for such approval should be forwarded to this office outlining in some detail the proposed expenditures for bank premises and furniture and fixtures together with information regarding financing arrangements and proposed depreciation of fixed assets.

If you have any questions, please let me know.

Very truly yours,

/s/ O. O. Wyrick
O. O. Wyrick
Vice President

P. E[redacted]

Summary of Conversation With Mr. O. O. Wyrick
9/6/67

Mr. Wyrick called me today and said he had received my letter that I'd written to Mr. Adams and had a chance to go over it in detail. There were a few things he wanted to clear up.

He said if this was going to be a clear sale, in other words Goldman, Sachs or the investors were going to build the building and then lease it to us, that he would have no hesitancy in approving it right away. However, if we were going to build the building and were going to borrow the 7½ million dollars in interim financing funds and then sell the building to Goldman, Sachs and lease it back that he could not approve this without going to the Board of Governors of the Federal Reserve if at any time the 7½ million would appear on our balance sheet as a liability.

We had discussed this possibility with the representatives of Goldman, Sachs by going one of two ways. Either we would handle the interim financing and sell the building to them after completion, or let them handle the interim financing with us selling the land to them from the start. After my discussion with Mr. Wyrick we again discussed this point with Goldman, Sachs representatives Ross and Fuchs. We told them that it would be much simpler if we sold the land to them, let them build the building, and arranged for immediate take-down of the money (probably starting in January of next year). In this way we could go ahead without any hitch, otherwise, we may be looking at a 60 to 90 day delay in getting the approval of the Federal Reserve Board in Washington. They said this was no problem and we would probably have to put our money into it from now til the end of the year and keep records

of it, then when they got the take-down in 1968 that we could take it down for what we had in it.

I am to let Mr. Wyrick know as soon as possible what we have resolved on this and he then will give us his final approval of it. The big problem in this matter of financing, however, is how do we go about saving the $125,000 in sales tax that we don't want to pay. I have handed this problem to Mr. Darr and asked him to follow up with Mr. Meek in outlining a procedure where we could buy the materials in the bank's name and then put it into the building and be repaid or have the permanent owners pay the suppliers

P. Ex. 39

EASTMAN DILLON, UNION SECURITIES & Co.
ONE CHASE MANHATTAN PLAZA
NEW YORK, NEW YORK, 10005

September 20, 1967

Mr. E. M. Penick, President
Worthen Bank & Trust Company
Little Rock, Arkansas

Re: Sale-Leaseback Financing
of New Bank Headquarters

Dear Mr. Penick:

In accordance with our discussions on September 13, we are setting forth herein our understanding of your requirements to finance the new Bank headquarters facilities. Based on these requirements, Stephens, Inc. and we are submitting to you herewith our recommendation of a program which may best fulfill your objectives.

Over the course of the last several years, Eastman Dillon, Union Securities & Co. has completed over $250 million of leaseback financing for bank facilities. The financing we presently contemplate for your Bank is comparable to these transactions. Aside from certain considerations peculiar to the various financings, the principal difference in your transaction is that ownership of your properties will rest with a totally independent landlord rather than with a corporation affiliated with your Bank. We have also arranged financings of this type aggregating in the hundreds of millions for major industrial corporations.

As a result of our substantial backlog of experience, we believe we can provide you with a maximum flexibility for the day-by-day use of the properties as well as favorable opportunities to purchase the properties at a reasonable price or continue as a tenant for a protracted period of

time. Furthermore, we can assure you of professional preparation and execution of all the technical details involved in such a complex transaction.

The Financing Requirements of the Bank

Land Value	$1,430,000
Cost of Financing:	
Headquarters Building	$7,000,000
Parking Deck	700,000
Total Financing	$7,700,000
Ground Breaking—	September 15, 1967
Estimated Completion Date of Construction—	June 30, 1969

Construction Financing Required

We understand that the Federal Reserve has determined that your total investment in this financing program should not exceed approximately $4 million. Accordingly, it will be necessary to provide construction financing. Such construction financing can be made available under our proposal, provided the Bank guarantees that the building will be completed to its satisfaction, by arranging for the takedown of all or a portion of the funds from the subject financing in the Spring of 1968. Any balance can be made available either during the course of construction or upon completion.

Financing Proposal

Our proposal assumes that you agree with our remarks of September 13 that it would be desirable for the Bank to continue to own the ground underlying the headquarters building and parking deck. Such a program would simplify the establishment of an equitable subsequent purchase price by the Bank, would not require the establishment of a

valuation for that portion of land underlying the headquarters building, and would perhaps meet the desire of your directors in having a proprietary interest in the facilities.

Title to the headquarters building and parking deck (the "Property") will rest with a limited partnership (the "Partnership") which will include Mr. Stephens and other individuals. The Partnership will lease the property to Worthen Bank and Trust Company (the "Bank") for a basic term of 25 years. The Partnership would finance the cost of the Property by the issuance of mortgage indebtedness to a special purpose corporation, Worthen Properties, Inc. (Worthen), organized by us solely for the purpose of doing this transaction. Such indebtedness would be secured by a mortgage on the Property and by an assignment to Worthen of a Lease (the "Lease") between the Partnership and the Bank.

Worthen would, in turn, finance the cost of acquiring such mortgage indebtedness of the Partnership through the sale of its Collateral Notes (the "Notes") to institutional investors. The Notes of Worthen would be secured by an assignment for the benefit of the institutional investors of its interest in such mortgage indebtedness, such mortgage and the Lease. The Notes will have a 25-year maturity and will be repaid 100% from rentals payable under the Lease. Rentals under the Lease will be sufficient and pay interest on the Notes and provide a modest cash income to the Partnership.

You will be provided with purchase options and lease renewal options as hereinafter set forth.

Interim Term of the Lease

The interim term of the Lease will begin on the closing date and will terminate upon completion of construction.

No rent will be payable during the interim term. Interest only will be payable upon expiration of the interim term.

The Lease

Under the Lease, the Bank will be permitted to make any alterations or improvements without prior approval so long as the resultant value of the Property is not thereby reduced. In the event of partial condemnation of or casualty to the Property, the Bank will be required to restore the Property and will be entitled to the insurance proceeds or the award. In the event of major condemnation of or casualty to the Property, the Bank will be permitted to cancel the Lease upon making an offer to purchase the Property and the leasehold interest in the underlying land at a price equal to the outstanding Note balance, if any. If such offer is accepted, the Bank would be entitled to receive the proceeds of any award or insurance.

The Lease will also provide that if either Worthen, the Partnership or the Bank be required to divest its estate in the Property by any Federal or state regulatory authority, the Lease may be terminated and the Bank would be required to make an offer to purchase such Property and the leasehold interest in the underlying land at a price equal to the Note balance.

The Bank will not be permitted to cancel the Lease during its initial ten years. Beginning with the eleventh year, the Bank will be permitted to cancel the Lease if it becomes uneconomic to continue the use and occupancy of the Property by offering to purchase the Property and the leasehold interest in the underlying land at a price at least equal to the outstanding Note balance. The Bank will also be permitted to cancel the Lease beginning in the eleventh year for any other reason, upon making a similar purchase offer plus appropriate premium. Except as described herein, the Lease may not be cancelled under any circumstances and the rent payable thereunder may not be abated.

The Lease will provide that in the event any claims are asserted against any of the rents so as to interfere with

their receipt by the trustee for the Noteholders or their application by the trustee or the Noteholders to the required payments of interest and principal on the Notes, the Bank will either satisfy such claims or liens or purchase the Property and the leasehold interest in the underlying land at a price sufficient to prepay the Notes and thereby terminate the Lease. This provision is known as a "lien offset agreement" and is necessary in this type of transaction to assure the Noteholders that they will receive payment on the Notes quarterly when due and payable and, therefore, to obtain the most favorable terms and rate of interest.

Renewal Options

The Bank will be provided with eight 5-year renewal options after the expiration of the basic 25-year Lease term. Rentals payable under such renewal terms will be as follows:

Five Year Renewal Options	*Annual Lease Rentals* (a)
1st	2½%
2nd	2
3rd	1½
4th	1
5th	1
6th	1
7th	1
8th	1

(a) As a per cent of original $7,700,000 cost.

The Ground Lease

The ground lease will have a term of 80 years. The ground lease will not contain any incurable defaults and the trustee for the Noteholders will have the right to cure all defaults occurring thereunder. In addition, the ground

lease will contain other provisions customary to this type of financing for the protection of the Noteholders, and must be acceptable to counsel for the Noteholders.

The Notes

The Notes will mature on the 25th anniversary of the commencement of the basic Lease term. After the commencement of the basic Lease term, the Notes will be payable in equal quarterly payments of interest and principal, in arrears. These installments will be sufficient to amortize 100% of the principal amount of the Notes by maturity together with accrued interest thereon. The Notes will be subject to prepayment only as follows:

1. In part with any monies remaining in the escrow fund after the completion of construction, at par.

2. In whole at any time in the event the Lease is terminated due to required divestiture, substantial casualty or condemnation, at par.

3. In whole at any time in the event of the termination of the Lease by the Bank due to the exercise of its obligations under the lien-offset agreement, at par.

4. In whole at any time after the tenth year of the basic Lease term in the event of uneconomic conditions, at par.

5. In whole at any time after the tenth year of the basic Lease term, at the option of Worthen or by reason of the termination of the Lease for other reasons, at 100% of the unpaid principal amount of the Notes, plus a premium of approximately 4% during the eleventh year, which premium shall decline in equal annual steps to zero at the end of the 24th year of the basic Lease term.

Escrow Fund

The proceeds of the Notes issued at the closing in the Spring of 1968 and any subsequent closings prior to completion of construction will be deposited in an escrow account to be created under the indenture. Monies deposited in the escrow fund will be paid to Worthen by the trustee upon certification of expenditures made in construction. During the life of the escrow fund, proceeds may be invested by the trustee, at the direction of the Bank, in securities having a maturity not in excess of the estimated period of construction. The investment will be limited to obligations of the U. S. Government or its agencies, certificates of deposit of banks having assets in excess of $1 billion or certificates of deposit of the Bank. The Bank will be responsible for any losses from the investment of the escrow fund.

Additional Notes

Any future additions or improvements may be financed by Worthen through the issue of additional notes in the principal amount of at least $500,000. Repayment of such additional notes shall be made by increasing rentals payable under the Lease by an appropriate amount.

Repurchase Options

The Bank will be provided with options to repurchase the Property at the end of the 15th year, the 20th year, the 25th year and the 30th year. The price to be paid shall be determined as follows: Assuming straight line depreciation on the Property and a 40-year useful life, the purchase price will be equivalent to the depreciated book value. The following schedule compares the estimated book value, debt balance and difference between the two at the four purchase option dates:

Purchase Option Date	(Purchase Price) 40-Year Life Straight Line Depreciated Book Value	Outstanding Note Balance	Difference: Purchase Price Over Debt Balance
15th year	$4,812,500	$4,678,665	$ 133,835
20th year	3,850,000	2,741,219	1,108,781
25th year	2,887,500	—0—	2,887,500
30th year	1,925,000	—0—	1,925,000

Cost of Financing

It is our understanding that the Bank will pay the cost of counsel representing the Note purchasers, the cost of printing the necessary legal documents, the initial and annual trustee expenses, and any other expenses associated with the transfer of title recording of the appropriate documents and incidental closing costs. It will not be necessary to provide title insurance so long as the Bank will supply a full covenant and warranty deed in satisfactory form. No fee will be payable to Stephens, Inc. or Eastman Dillon, Union Securities & Co. for arranging the financing.

There are probably a number of questions left unanswered since I have attempted to describe in a few paragraphs a rather sophisticated form of financing. Please bear in mind that the above proposal can be altered in order to fully accommodate the requirements or preferences of the Bank and your Board of Directors.

We shall be happy to further discuss this transaction at your convenience either in Little Rock or New York City.

Yours very truly,

/s/ Theodore M. Siouris
Theodore M. Siouris
A General Partner

P. Ex. 40

Worthen Bank and Trust Company
Little Rock, Arkansas

April 16, 1968

Mr. H. C. Adams
State Bank Commissioner
National Old Line Building
Little Rock, Arkansas

Re: Construction of Worthen Building

Dear Mr. Adams:

I have previously discussed with you, and you have previously indicated your approval of the sale and lease back arrangement for the financing of our new bank building. However, attorneys for New York Life Insurance Company, the permanent lender, and First National City Bank of New York, the construction lender, have requested that Worthen Bank & Trust Company obtain formal approval by the State Bank Commission of the consummation of the transactions involved in the construction of our new bank and office building.

The purpose of this letter is to outline briefly the transactions involved in the construction of the Worthen Building.

The Bank owns Lots 1 through 8 and the South 16.45 feet of Lot 9, Block 84, Original City of Little Rock, Pulaski County, Arkansas.

Pursuant to a construction contract with Matson-Bellows, a joint venture, the Bank is constructing on the southern portion of such land a bank and office building, hereafter referred to as the "Bank Building," and on the northern portion a garage and parking facility, hereafter referred to as the "Parking Facility."

The Bank shall sell the Bank Building, but neither the land underlying it nor the adjoining Parking Facility, to

Frank Lyon Company for the sum of $7,640,000. Title to the Bank Building shall pass to Frank Lyon Company as construction progresses.

The Bank shall deliver to Frank Lyon Company a warranty deed to the Bank Building.

Frank Lyon Company has arranged for the construction loan with First National City Bank of New York. The loan commitment of First National City Bank requires the execution of the following documents:

(a) Building Loan Agreement between Frank Lyon Company and First National City Bank setting forth the conditions of the loan.

(b) Building Loan Mortgage Note in the amount of $7,000,000 executed only by Frank Lyon Company and payable to First National City Bank.

(c) Building Loan Mortgage executed by Frank Lyon Company and the Bank to secure payment of the indebtedness of $7,000,000. covering the Bank Building, Frank Lyon Company's interest in the Ground Lease of the land underlying the Bank Building, the interest of Frank Lyon Company in the lease of the Bank Building to the Bank, and the interest of the Bank in the land underlying the Bank Building and in the adjoining Parking Facility.

(d) Guaranty whereby the Bank guarantees to First National City Bank that construction of the Bank Building will be fully completed by December 1, 1969, in accordance with the plans and specifications therefor, free of all liens; that it will comply with the terms of the loan Agreement applicable to it; that, if the construction loan is not paid off by December 1, 1969, the Bank will enter into a new lease of the Bank Building with Frank Lyon Company with sufficient rent to amortize the principal and interest of a permanent loan in accordance with terms acceptable to First National City Bank; that the Bank will occupy at least 110,000 square feet of interior space in the Bank Building; and that such space will be finished for occupancy by December 1, 1969.

Frank Lyon Company will lease the Bank Building to the Bank for a term of 25 years at a rental sufficient to amortize the permanent loan to be made by New York Life Insurance Company. The Bank has the option to extend the lease for 8 additional terms of five years each at an annual rental of $300,000 and has the option to purchase the Bank Building upon the following terms:

Date	Purchase Price
November 30, 1980	$ 800,000
November 30, 1984	$1,000,000
November 30, 1989	$1,603,568
November 30, 1994	$2,145,935

In the event of such purchase, the Bank shall assume all indebtedness against the Bank Building evidenced by the New York Life loan.

The Bank will lease the land underlying the Bank Building to Frank Lyon Company for a term expiring upon the first to occur of (a) November 30, 2044, and (b) termination of the lease of the Bank Building as provided therein. The Ground Lease rental shall be $1.00 per year until November 30, 1994, the date on which the permanent loan by New York Life Insurance Company shall by its terms have been repaid.

Frank Lyon Company will arrange for permanent financing of the Bank Building by means of the sale to New York Life Insurance Company of a promissory note made by Frank Lyon Company in the principal amount of $7,140,000. The agreement of New York Life Insurance Company to purchase the promissory note shall be in the form of a Note Purchase Agreement.

Pursuant to the commitment of New York Life Insurance Company, the promissory note of Frank Lyon Company shall be secured by a deed of trust executed by Frank Lyon Company and the Bank to a trustee designated by New York Life Insurance Company, covering the Bank Building (subject to the Bank's lease), the interest of Frank Lyon Company in the lease of the Bank Building, the interest of Frank Lyon Company in the lease of the land underlying the Bank Building, the interest of the Bank in the land underlying the Bank Building and in the adjoining Parking Facility.

As a further condition to making the permanent loan, New York Life has required that the Bank enter into a Consent and Agreement whereby the Bank makes certain representations to New York Life with respect to the Bank's corporate status, its financial affairs, its authority to enter into the various transactions contemplated, its authority to enter into the various leases, its title to the land underlying the Bank Building and the Parking Facility, cost of the Bank Building and Parking Facility, proper execution of the various instruments, and the right of New York Life to inspect the property subject to the lien of the deed of trust and to examine the books of account of the Bank.

Since your approval of the foregoing is being required by First National City Bank to close the construction loan, we would greatly appreciate hearing from you at your earliest convenience.

Sincerely,

/s/ Ed Penick
President

The plan of financing your building as outlined in this letter has my approval.

Date: 4/17/1968.

Arkansas State Bank Commissioner
By H. C. Adams
H. C. Adams

P. Ex. 41

Worthen Bank and Trust Company
LITTLE ROCK, ARKANSAS

April 16, 1968

Mr. O. O. Wyrick
Vice President
Federal Reserve Bank of St. Louis
P. O. Box 442
St. Louis, Missouri 63166

Dear Mr. Wyrick:

I have previously discussed with you, and you have previously indicated your approval of the sale and lease back arrangement for the financing of our new bank building. However, Attorneys for New York Life Insurance Company, the permanent lender, and First National City Bank of New York, the construction lender, have requested that Worthen Bank & Trust Company obtain formal approval by the Board of Governors of the Federal Reserve System of the consummation of the transactions involved in the construction of our new bank and office building.

If formal approval of the Board of Governors is not required, we must furnish proof in the form of a letter from you to that effect.

The purpose of this letter is to outline briefly the transactions involved in the construction of the Worthen Building.

The Bank owns Lots 1 through 8 and the South 16.45 feet of Lot 9, Block 84, Original City of Little Rock, Pulaski County, Arkansas.

Pursuant to a construction contract with Matson-Bellows, a joint venture, the Bank is constructing on the southern portion of such land a bank and office building.

hereafter referred to as the "Bank Building," and on the northern portion a garage and parking facility, hereafter referred to as the "Parking Facility."

The Bank shall sell the Bank Building, but neither the land underlying it nor the adjoining Parking Facility, to Frank Lyon Company for the sum of $7,640,000. Title to the Bank Building shall pass to Frank Lyon Company as construction progresses.

The Bank shall deliver to Frank Lyon Company a warranty deed to the Bank Building.

Frank Lyon Company shall arrange for the construction loan with First National City Bank of New York. The loan commitment of First National City Bank requires the execution of the following documents:

(a) Building Loan Agreement between Frank Lyon Company and First National City Bank setting forth the conditions of the loan.

(b) Building Loan Mortgage Note in the amount of $7,000,000 executed only by Frank Lyon Company and payable to First National City Bank.

(c) Building Loan Mortgage executed by Frank Lyon Company and the Bank to secure payment of the indebtedness of $7,000,000. covering the Bank Building, Frank Lyon Company's interest in the Ground Lease of the land underlying the Bank Building, the interest of Frank Lyon Company in the lease of the Bank Building to the Bank, and the interest of the Bank in the land underlying the Bank Building and in the adjoining Parking Facility.

(d) Guaranty whereby the Bank guarantees to First National City Bank that construction of the Bank Building will be fully completed by December 1, 1969, in accordance with the plans and specifications

therefor, free of all liens; that it will comply with the terms of the Loan Agreement applicable to it; that, if the construction loan is not paid off by December 1, 1969, the Bank will enter into a new lease of the Bank Building with Frank Lyon Company with sufficient rent to amortize the principal and interest of a permanent loan in accordance with terms acceptable to First National City Bank; that the Bank will occupy at least 110,000 square feet of interior space in the Bank Building; and that such space will be finished for occupancy by December 1, 1969.

Frank Lyon Company will lease the Bank Building to the Bank for a term of 25 years at a rental sufficient to amortize the permanent loan to be made by New York Life Insurance Company. The Bank has the option to extend the lease for 8 additional terms of five years each at an annual rental of $300,000 and has the option to purchase the Bank Building upon the following terms:

Date	Purchase Price
November 30, 1980	$ 800,000
November 30, 1984	$1,000,000
November 30, 1989	$1,603,568
November 30, 1994	$2,145,935

In the event of such purchase, the Bank shall assume all indebtedness against the Bank Building evidenced by the New York Life loan.

The Bank will lease the land underlying the Bank Building to Frank Lyon Company for a term expiring upon the first to occur of (a) November 30, 2044, and (b) termination of the lease of the Bank Building as provided therein. The Ground Lease rental shall be $1.00 per year until November 30, 1994, the date on which the permanent loan by New York Life Insurance Company shall by its terms have been repaid.

Frank Lyon Company will arrange for permanent financing of the Bank Building by means of the sale to New York Life Insurance Company of a promissory note made by Frank Lyon Company in the principal amount of $7,140,000. The agreement of New York Life Insurance Company to purchase the promissory note shall be in the form of a Note Purchase Agreement.

Pursuant to the commitment of New York Life Insurance Company, the promissory note of Frank Lyon Company shall be secured by a deed of trust executed by Frank Lyon Company and the Bank to a trustee designated by New York Life Insurance Company, covering the Bank Building (subject to the Bank's lease), the interest of Frank Lyon Company in the lease of the Bank Building, the interest of Frank Lyon Company in the lease of the land underlying the Bank Building, the interest of the Bank in the land underlying the Bank Building and in the adjoining Parking Facility.

As a further condition to making the permanent loan, New York Life has required that the Bank enter into a Consent and Agreement whereby the Bank makes certain representations to New York Life with respect to the Bank's corporate status, its financial affairs, its authority to enter into the various transactions contemplated, its authority to enter into the various leases, its title to the land underlying the Bank Building and the Parking Facility, cost of the Bank Building and Parking Facility, proper execution of the various instruments, and the right of New York Life to inspect the property subject to the lien of the deed of trust and to examine the books of account of the bank.

As your formal approval of the foregoing is required by First National City Bank to close the construction loan, I would greatly appreciate your indicating your approval on the attached copy of this letter in the space that I have

provided. Any questions that you may have on this financing arrangement I will be happy to go into detail with you.

Sincerely,

/s/ Ed Penick
President

The plan of financing your building as outlined in this letter has my approval.

April 23, 1968
(Date)

Federal Reserve Bank of St. Louis

By O. O. Wyrick
Vice President

P. Ex. 42

FEDERAL RESERVE BANK OF ST. LOUIS
P. O. Box 442
ST. LOUIS, MISSOURI 63166

April 19, 1968

Mr. Edward M. Penick, President
Worthen Bank and Trust Company
P. O. Box 1681
Little Rock, Arkansas 72203

Dear Mr. Penick:

This refers to your letter of April 16, 1968, regarding interim and permanent financing of the new bank building under construction and requesting our approval of the program as outlined in your letter.

On the basis of previous understandings that the bank's investment in bank premises will not exceed its capital stock, my letter of September 13, 1967, advised that the propsed new building project would not require prior approval under the provisions of Section 24A of the Federal Reserve Act of the Board of Governors of the Federal Reserve System. At that time it was understood that the bank would have no financial interest in the building and would furnish none of the funds for its construction.

Your letter of April 16, 1968, indicates that Frank Lyon Company shall arrange for the construction loan. In order that we may be in a position to execute the approval requested in your letter the following information is required: (1) please advise us as to the present carrying or book value of all bank premises (all offices) including leasehold improvements; (2) caption or title and present balance in "construction account"; (3) a projection as to highest amount construction account will reach before the bank is reimbursed by Frank Lyon Company; and (4)

your assurance that the book value of bank premises plus the balance at any time in the construction account will not exceed the bank's capital stock.

Upon receipt of this information and assurances, we will be a position to act upon your request.

Very truly yours,

/s/ O. O. WYRICK
O. O. Wyrick
Vice President

P. Ex. 43

WORTHEN BANK AND TRUST COMPANY
LITTLE ROCK, ARKANSAS

April 22, 1968

Mr. O. O. Wyrick, Vice President
Federal Reserve Bank of St. Louis
P. O. Box 442
St. Louis, Missouri 63166

Dear Mr. Wyrick:

In answer to the questions in your letter of April 19 concerning the book value of our premises, we have a total book value, including what we refer to as "new bank building" of $3,684,883.34. This amount includes all lands, buildingsand leasehold improvements of all of our offices that are owned by the bank, or leased by the bank. Of this $3,684,883.34, we have in the "new bank building account" $2,113,697.10. This would compare to what you referred to as "construction account". As you can see, we are almost out of construction money because we have your request and our agreement that the total in these accounts would not exceed the book value of the bank capital stock which is $4,000,000.00. So in answer to that question, we have the difference between what is now in the book value of all lands, buildings and leasehold and $4,000,000.00 to go. We are not going over the $4,000,000.00.

In reality we have worked in reverse of your questions. We have first said that we would not have over $4,000,000.00 in this account and we have worked backwards from that to keep a tight string on the "new bank building account". The thing that is putting the most pressure on us is the fact that the mechanics of closing this purchase and lease back with Frank Lyon Company as the future owner, First National City in New York as the interim lender, New York Life Insurance as the permanent lender and

Worthen Bank as the present owner but future tenant, is most complicated and there are a myriad of lawyers deciding on all manner of future contingencies.

It is my understanding that all of the points of disagreement have been ironed out and it is a matter of mechanically typing up the paper work and signing them. I have been assured that this will happen within the next week or ten days in New York.

I believe that this is the detail information that you requested and the assurances that you needed in order to act upon our request of April 16.

Sincerely,

/s/ JAMES PENICK, JR.
Executive Vice President

P. Ex. 44

FEDERAL RESERVE BANK OF ST. LOUIS
P. O. BOX 442
ST. LOUIS, MISSOURI 63166

April 23, 1968

Mr. James Penick, Jr.
Executive Vice President
Worthen Bank & Trust Company
P. O. Box 1681
Little Rock, Arkansas 72203

Dear Mr. Penick:

This will acknowledge and thank you for your letter of April 22 in response to my letter of April 19 regarding your bank construction program.

In the light of our previous understandings and the information submitted in your letters of April 16 and April 22, I am pleased to grant my approval to the plan of financing your new bank building as requested. Enclosed is the signed copy of your letter of April 16.

Kind personal regards.

Sincerely,

/s/ O. O. WYRICK
O. O. Wyrick
Vice President

P. Ex. 45

WORTHEN BANK BUILDING

COMPARISON OF ANNUAL RENT WITH TOTAL OF DEPRECIATION AND INTEREST FOR FIRST 10 YEARS

Year	Annual Lease Payments	Depreciation Straight-line	Interest Expense	Total Depreciation & Interest	Excess Over Rent
1970	$582,324.12	$169,777.78	$479,385.91	$649,163.69	$66,839.57
1971	,,	,,	472,274.12	642,051.90	59,727.78
1972	,,	,,	464,670.00	634,447.78	52,123.66
1973	,,	,,	456,539.48	626,317.26	43,993.14
1974	,,	,,	447,846.08	617,553.86	35,299.74
1975	,,	,,	438,550.86	608,328.64	26,004.52
1976	,,	,,	428,612.15	598,389.93	16,065.81
1977	,,	,,	417,985.42	587,763.20	5,439.08
1978	,,	,,	406,623.00	576,400.78	(5,923.34)
1979	,,	,,	394,474.00	564,251.73	(18,072.39)

Annual Lease Payments beginning 12/1/1980 thru 11/30/1994— $613,157.28

Annual Lease Payments Thereafter $300,000.00

P. Ex. 46

WORTHEN BANK & TRUST CO.
RENT SCHEDULE ON WORTHEN BUILDING
1994

Purchase Option price of building in 1994		$2,145,935
I. Average rate of return on capital	10.1%	
Annual return on $2,145,934	$216,739	
Total return for 40 years		$8,669,560
OR:		
II. Rent expense (net) from 1994-2034:		
5 yrs. @ $200,000—$1,000,000		
5 yrs. @ 150,000— 750,000		
5 yrs. @ 100,000— 500,000		
25 yrs. @ 50,000— 1,250,000		
Total rent (40 yrs.)		3,500,000
Accumulative dollar advantage of continuing to lease The Worthen Building		$5,169.560

P. Ex. 47

LEASE

THIS LEASE is made as of the first day of May, 1968, between T. H. MAYER and NICHOLAS M. MAYER, hereinafter referred to collectively as "lessor", and SAFEWAY STORES, INCORPORATED, a Maryland corporation, hereinafter referred to as "lessee, on the following terms and conditions:

1. *Premises, Term.* Lessor hereby leases to lessee the following described real property and improvements thereon in the City of Little Rock, County of Pulaski, and State of Arkansas:

Tract #1: A parcel of land in the Northwest Quarter of the Northeast Quarter and Northeast Quarter the Northwest Quarter, Section 2, Township 1 North, Range 13 West in Little Rock, Pulaski County, Arkansas. More particularly described as:

Commencing at the Southwest corner of Northwest Quarter, Section 2, Township 1 North, Range 13 West; thence North 190.74 feet to a point on the Easterly Right of Way of Rodney Parham Road for a point of beginning; thence North 38 degrees 43 minutes 30 seconds West along said Right of Way Line 186.20 feet; thence North 39 degrees 44 minutes 30 seconds West along said Right of Way Line 108.32 feet; thence North 88 degrees 32 minutes 00 seconds East 186.25 feet; thence North 107.00 feet; thence South 89 degrees 49 minutes 30 seconds East 185.00 feet; thence South 138.00 feet; thence North 89 degrees 49 minutes 30 seconds West 3.00 feet; thence South 256.76 feet; thence South 88 degrees 51 minutes 40 seconds West 137.09 feet to the Easterly Right of Way Line of Rodney Parham Road; thence North 38 degrees 11 minutes 00 seconds West along said Right of Way line 72.92 feet to the point of beginning, containing 2.133 acres, more or less.

Together with a nonexclusive easement for ingress and egress for driveway purposes for the join use of lessor and lessee, their tenants, subtenants, employees, customers and invitees over the following-described parcel of land.

Tract #2: A parcel of land in the Northwest Quarter of the Northeast Quarter, Section 2, Township 1 North, Range 13 West, Little Rock, Pulaski County, Arkansas. More particularly described as:

Commencing at the Southwest corner of the Northwest Quarter of Northeast Quarter, Section 2, Township 1 North, Range 13 West, thence North 190.74 feet to a point on the Easterly Right of Way Line of Rodney Parham Road; thence South 38 degrees 11 minutes 00 seconds East along said Right of Way Line 72.92 feet; thence North 88 degrees 51 minutes 40 seconds East, 137.09 feet to the point of beginning and the Southeast corner of Tract #1; thence North 74.76 feet; thence South 41 degrees 04 minutes 05 seconds East 249.76 feet; thence South 0 degrees 06 minutes 30 seconds East, 10.00 feet to the North Right of Way Line of West Markham Street; thence South 88 degrees 54 minutes 00 seconds West along said Right of Way Line 41.93 feet; thence North 38 degrees 11 minutes 00 seconds West, 158.80 feet; thence South 88 degrees 51 minutes 40 seconds West, 24.01 feet to the point of beginning, containing 0.186 acres, more or less.

All as shown on Exhibit "A" attached hereto and made a part hereof which said Exhibit sets forth the leased premises in red color, the area retained by lessor in green color, the parking area subject to common use of all tenants in blue color, and the Conoco lease in yellow color.

To Have and To Hold the leased premises with all appurtenances, for an original term of twenty (20) years from May 1, 1968, to April 30, 1988, both inclusive. In the event the lessee deems it necessary to extend the original terms of this lease in connection with its sale of the leased

premises for leaseback or in connection with financing, by mortgage or otherwise, lessee shall have the right to extend the said term for such period as lessee deems necessary, but in no event beyond the 30th day of April, 1990.

2. *Rent.* Lessee agrees to pay rent in the sum of Eight Hundred Thirty-three and 34/100 Dollars ($833.34) on the first day of each calendar month during the original term, by checks or drafts payable to C. V. Barnes, Agent, and mailed to him at 733 Pyramid Building, Little Rock, Arkansas, or as designated in writing by lessor, with proration for any fractional calendar month.

3. *Taxes, utility charges, etc.* Lessee agrees to pay all charges for electricity, gas, heat, water, sewer, telephone and other utility services used on the leased premises and all taxes and assessments on the leased premises and on all improvements construed thereon, for the period while this lease is in effect, with taxes and assessments to be prorated to the first and last days of the term.

4. *Construction and Alteration of Building Improvements.* Lessee may, at lessee's expense, construct on the leased premises any improvements, including, without limitation, a store building and parking area, and make such repairs, additions, alterations and improvements thereto as lessee may deem desirable. All improvements so constructed by lessee shall be primarily for the purpose of operating a modern retail supermarket and purposes reasonably related thereto. The store building shall provide not less than 15,000 square feet and shall be constructed within a period of two (2) years from the date hereof, exclusive of delays on account of Acts of God, riots, strikes, and shortage of construction material, provided, however, that if lessee does not commence the construction of such store building within a period of two (2) years from the date hereof, upon expiration of the said period and at any time thereafter prior to the commencement by lessee of the construction of such store building lessor may

terminate this lease upon giving to lessee thirty (30) days written notice of cancellation in the manner hereinafter provided. Lessor shall not be obligated to maintain the leased premises or to maintain, replace or rebuild any improvements thereon. All improvements constructed on the leased premises by lessee, and all additions, alterations and improvements thereto made by lessee, shall not become a part of the realty even if affixed to the realty but shall remain the exclusive personal property of lessee during the term of this lease and during the term of any extension or renewal of this lease by the exercise of one or more renewal options under the provisions of paragraph 19 hereof. On surrendering possession to lessor, all building improvements then located on the leased premises shall become the exclusive property of the lessor. Lessee agrees not to permit any liens to stand against the leased premises for work done or materials furnished to lessee, provided, however, that lessee may contest the validity of any such lien, but upon a final determination of the validity thereof, lessee shall cause such lien to be paid and released of record without cost to lessor.

In order that lessor may provide for the proper use of the area retained by lessor as indicated in green on the plat attached hereto, lessee will furnish to lessor, for its prior approval, a copy of lessee's drainage, grading, and paving plans for the leased premises, which approval by lessor will not be unreasonably withheld.

In the event that lessee undertakes to pave or hard surface the access area from West Markham Street to the common area and if and when lessor leases any part of its premises adjacent to the common area as indicated on the plat attached hereto, then in such event lessor will reimburse lessee for the costs of paving or hardsurfacing the said access area in an amount not to exceed forty cents (40¢) per square foot.

In the event that the City requires the construction of a screen type or other type of fence along the perimeter of the area retained by lessor indicated in green on the plat attached hereto when lessor constructs its improvements on the leased premises, then in such even lessor will, without cost to lessee, construct, or cause to be constructed, such fence as may be required by the City.

5. *Lessee's Fixtures.* Lessee may install in the leased premises such fixtures and equipment as lessee deems desirable and all of said items shall remain lessee's property whether or not affixed to the leased premises. Lessee may remove the said items from the leased premises at any time but shall repair any damage caused by removal.

6. *Common Area, Maintenance.* That part of the leased premises constructed by lessee and used by it as a parking area (indicated in blue color on the plat attached hereto and marked Exhibit "A" and hereinafter sometimes referred to as "common area") shall be for the common use as a parking area by all tenants of lessor. Until there are other tenants of lessor to use the common area, lessee will, at lessee's expense, maintain the common area in a manner suitable to it. Lessee may require any additional tenants of lessor who use the common area to contribute reasonably to the costs incurred by lessee in lighting and maintaining the common area not to exceed, however, a contribution in excess of the proportion which the area of the premises leased to each such other tenant bears to the total area of all such leased premises exclusive of the common area, and lessor will so provide in its leases to any such other tenant or tenants.

Such common area will never at any time be less than one parking space for each two hundred (200) square feet of retail sales area, provided, however, that nothing herein contained shall prevent lessee from expanding its building to cover that area designated as ramp and service drive on the plat attached hereto. Lessor, lessee, and all other ten-

ants of lessor using the said common area shall have a common right of ingress and egress thereto for themselves and for the use of their leased premises. Lessee shall certify to lessor monthly, or at such other times as the parties hereto may agree, the amount of its actual net accounting costs for such lighting and maintenance, and lessor will reimburse lessee in the amount of such costs to be borne by the other tenants of lessor.

7. *Indemnification.* Lessee agrees to indemnify lessor and save lessor harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments arising from injury to person or property on the leased premises or on the adjoining streets and sidewalks, except if caused by the willful or negligent act of lessor or lessor's agents or employees.

8. *Assignment and subletting.* Lessee may assign this lease or sublet the whole or any part of the leased premises but lessee shall remain liable to lessor for the full performance of lessee's obligations hereunder.

9. *Holding over.* If lessee remains in possession of the leased premises after the expiration of this lease and rent is paid and accepted, such possession shall create a month-to-month tenancy on the terms herein specified which tenancy may be terminated by either party by thirty (30) days written notice to the other party.

10. *Default.* If lessee remains in default more than thirty (30) days after receipt of lessor's notice specifying such default, lessor may declare the term ended and reenter the leased premises with or without process of law. If lessor remains in default for more than thirty (30) days after receipt of lessee's notice specifying such default, lessee may either (a) incur any expense necessary to perform any obligation of lessor specified in such notice and deduct such expense from the rents to become due or (b) declare the term ended and vacate the leased premises

and be relieved of all further obligations hereunder. The performance of each and every covenant and agreement in this lease on the part of lessor shall be a condition precedent to lessor's right to collect rent or enforce this lease.

11. *Lessor's title.* Lessor covenants that lessor has lawful title to the leased premises and full right to make this lease and the lessee shall have quiet and peaceful possession of the leased premises. Lessor covenants that, at the commencement of the term, the leased premises will be free from encumbrances not agreed to in writing by lessee and that there will be no title or other matters not agreed to in writing by lessee, which will restrict the erection of any building or improvements as herein provided or the operation of a modern retail super-market (including the sale of malt and vinous beverages if not prohibited by law and if lessee obtains all necessary licenses and/or permits at lessee's expense) on the leased premises. Lessor covenants that the leased premises will extend to the street line on all adjacent streets and alleys, that there will be no encroachment of improvements from or onto adjoining property and that lessee will be able to obtain, at lessee's expense, a survey which will confirm said covenants. Lessor also covenants that lessee will be able to obtain, at lessee's expense, a leasehold policy of title insurance from a title insurance company satisfactory to lessee, insuring lessee that its leasehold interest is superior to and free and clear of all matters not agreed to in writing by lessee. In the event of a violation of any of the foregoing covenants or the existence of facts at variance with such covenants, lessee may cancel this lease by notice to lessor.

12. *Condemnation.* If any portion of or interest in the leased premises shall be taken or damaged by condemnation under any right of eminent domain or any transfer in lieu thereof, other than for the purpose of widening presently existing streets not to exceed fifteen (15) feet on the side of each streets, lessee may either (1) remain in

possession with this lease continuing as to the remaining portion of the leased premises but with the rental under paragraph 2 reduced in the ratio which the remaining land area in the leased premises bears to the total land area preceding such condemnation, or (2) if such taking shall render the leased premises substantially unsuitable for lessee's business operations, cancel this lease as of the date of such condemnation by notice to lessor within one hundred eighty (180) days after said date even though lessee may not have constructed any improvements on the leased premises. If this lease is so terminated, lessee shall deliver to lessor a bill of sale transferring the title to any building improvements on the leased premises to lessor. In the event of any condemnation and whether or not lessee elects to terminate this lease, lessee shall be entitled to any and all awards or payments made in the condemnation proceedings in respect to any damage to (a) lessee's leasehold interest, (b) any improvements constructed on the leased premises by lessee to the extent of lessee's equitable interest therein in the proportion that the unexpired term as it may have been extended by the exercise of options to extend bears to the period of fifty (50) years, and (c) lessee's fixtures and equipment which lessee would be entitled to remove upon the expiration of the demised term.

13. *Cancellation.* Provided lessee has theretofore constructed a building on the leased premises and is not in default under any of the terms of this lease, lessee may terminate this lease at any time by giving lessor thirty (30) days' notice and delivering to lessor a bill of sale adequate to transfer to lessor clear title to all building improvements on the leased premises on the effective date of termination. Such termination shall discharge both lessor and lessee from further liability under this lease and this lease shall be of no further force or effect.

14. *Lessee's right of first refusal.* If lessor determines to sell all or any part of the leased premises, other than

in the process of a regular liquidation of lessor, and receives an acceptable bona fide offer therefor, lessor, before making any agreement to sell, will give notice to lessee stating lessor's desire to sell and the amount of such offer. Lessee shall have the exclusive right for thirty (30) days after receiving such notice to purchase the premises to which such offer refers at the amount of said offer, or for any lesser amount which lessor may be willing to accept. If lessee fails to exercise the said right and the premises are sold by lessor to a third party, such sale shall nevertheless be made subject to this lease, including this paragraph, and said right shall be applicable to any and all subsequent offers to purchase received by lessor's successors and assigns.

15. *Lessor's Right of First Refusal.* While at any time lessee holds the title to the improvements, alterations or additions constructed by lessee on the leased premises, if lessee determines to sell all or any part of the said improvements, alterations, or additions and receives an acceptable bona fide offer therefor, lessee, before making any agreement to sell, will give notice to lessor stating lessee's desire to sell and the terms, conditions and amounts of such offer. Lessor shall have the exclusive right for thirty (30) days after receiving such notice to purchase the said improvements, alterations or additions to which such offer refers upon the terms, conditions and at the amount of said offer, or for any lesser amount which lessee may be willing to accept. If lessor fails to exercise the said right and the premises are sold by lessee to a third party, such sale shall nevertheless be made subject to this lease, not, however, including this paragraph number 15.

16. *Competitive business.* Lessor covenants not to permit over 2,000 square feet of sales area (including aisle space adjacent thereto) in any other premises owned or controlled by lessor and situate within 1,000 feet of the

leased premises to be devoted to the sale of food for off-premises consumption. Lessor contemplates the construction of a shopping center on premises controlled by lessor and situate within 1,000 feet of the leased premises, said premises being herein referred to as the "shopping center". Lessee covenants that the leased premises shall not be used by its assignee or subtenants for any business purpose which conflicts with any exclusive clause contained in the lease of any tenant in the shopping center, provided lessee has been informed in writing by lessor of any such exclusive clause prior to the date on which lessee commences to use the leased premises for or permits the use of the premises for such conflicting purpose.

17. *Vacancy of Premises.* In the event that lessee should determine to vacate the leased premises or to discontinue its operation therein prior to the termination of the term herein demised, or any extension thereof, lessee shall give to lessor four (4) months' prior written notice of intention to vacate. If thirty (30) days prior to the date on which lessee has determined to vacate the leased premises, the said leased premises shall not have been sublet, lessor is hereby empowered as agent of lessee to sublet the leased premises, in whole or in part, and to keep the leased premises, in whole or in part, subletted, for and in the name of lessee, and on its behalf, at the highest rental reasonably obtainable by lessor. In the event such rental is less than the rental lessee is obligated to pay to (1) the lessor herein and (2) its leasehold improvements lessor (which rental payable to the leasehold improvements lessor during the term of the leasehold improvements lease shall not be higher in any year than for any preceding year of the said term), including all of lessee's obligations to pay taxes, insurance premiums, and maintenance costs, lessor shall reimburse lessee for the difference between the sublease rental and lessee's rental obligation as set forth in terms

(1) and (2) of this paragraph, it being the intention of the parties hereto that lessee shall suffer no monetary loss by reason of any sublease made by lessor as agent of lessee. In the event the leasing by the lessor as agent of lessee as hereinabove provided occurs at such time lessee is the owner of the ground lease and the leasehold improvements, then in such event, lessor shall reimburse lessee for the difference between the sublease rent and the amount required to be paid by lessee under this ground lease which shall include rent, taxes, cost of insurance premiums, and any maintenance which is required to be performed by lessee, plus the fair rental value of the building improvements owned by lessee and included in the aforesaid lease made by lessor as agent for lessee. At its option, lessee shall have the right to offset against rental payable by lessee under this ground lease, any amount for which lessee is entitled to reimbursement by lessor under the provisions of this paragraph.

In the event lessee vacates the leased premises or discontinues its operations as hereinabove set forth, and in the further event that lessee cancels its leasehold improvements lease by offer to purchase the leased premises from its leasehold improvements lessor, and in the further event that lessee does in fact repurchase said leased premises, then in such event, lessee agrees that the provisions of paragraph 20 of this ground lease shall be of no further force or effect and that this lease shall terminate at the expiration of the original term hereof.

Lessee further agrees that, in addition to the rights of the lessor as set forth in this paragraph 17, lessor shall have the right, but only under the circumstances as set forth in this paragraph 17, to require lessee to assign to lessor, lessee's interest as lessee under the leasehold improvements lease referred to in paragraph 15 hereof, subject to the following conditions:

1. Lessor will assume all of the obligations of lessee as lessee under said leasehold improvements lease and will agree to hold lessee harmless from any and all liability.

2. There is attached hereto as Exhibit "B" a copy of Article 6 as it appears in lessee's standard form of leasehold improvements lease. If language comparable to the language shown in Exhibit "B" is included in lessee's leasehold improvement lease, lessee shall have the right to include in said assignment a provision to the effect that the rights granted to the lessee in Subsection III and in the last paragraph thereof shall not be exercised by the assignee and a further provision that in the event that assignee exercises the rights provided in Sub-sections I and II thereof assignee will not undertake any such alterations and/or construction in excess of $10,000 or without first presenting to the lessor the plans and specifications therefor and obtaining lessors approval and consent, which approval and consent in either of such events shall not be unreasonably withheld.

3. The leasehold improvements lease will contain provisions permitting the lessee to cancel the leasehold improvements lease by offer to purchase. The assignment of lease will provide that the assigns will have no right to cancel said leasehold improvements lease by offer to purchase until assignee has deposited in escrow an amount sufficient to pay the repurchase price and costs incidental to such repurchase, or has provided lessee with evidence satisfactory to lessee of assignee's ability to pay said repurchase price.

Nothing in this paragraph, however, except payment of the rent in full, shall relieve lessee of its obligation to pay the rental reserved herein for the full demised term or of any extension thereof.

18. *Compliance with laws.* Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises. Lessee may contest the validity of such law, ordinance, rule or regulation but shall indemnify and hold lessor harmless against the consequences of any violation thereof by lessee.

19. *Notices.* Any notice provided for herein shall be given by registered or certified United States mail, postage prepaid, addressed, if to lessor, to the person to whom the rent is then payable at the address to which the rent is then mailed, and, if to lessee, to it at P. O. Box 660, Oakland, California. The person and the place to which notices are mailed may be changed by either party by notice to the lessor gives lessee hereunder shall also be given by registered or certified United States mail to such other persons and at such places as lessee may designate in writing. Upon lessee's written request, and provided lessor can do so truthfully, lessor will certify in writing to all persons designated by lessee (1) that lessee has performed all of lessee's obligations and is not in default under this lease, (2) that this lease is in full force and effect and (3) that each person receiving such certification may rely thereon for all purposes. Lessor further agrees that in the event of any default by lessee under this lease, any mortgage or other holder of a security interest in lessee's leasehold or improvements and/or any assignee or sublessee of lessee may cure such default within the time allowed lessee for same hereunder and continue this lease in full force and effect.

20. *Renewal Options.* With the expiration of the term hereby demised, if this lease shall then be in full force and effect and the lessee shall have complied, in all respects, with the agreements, conditions, covenants and terms hereof, lessee may, upon not less than one hundred eighty (180) days prior written notice given by lessee to lessor, at its

option, extend the term of this lease for six (6) additional periods of five (5) years each on the same terms and conditions for an annual rental for each renewal term equal to the fair rental value of the land (exclusive of improvements constructed by lessee) as may be agreed upon by the parties hereto, and, in the absence of such agreement, as may be determined by arbitration by three arbitrators, one of whom shall be appointed by each party hereto and the third of whom shall be appointed by the other two.

21. *Remedies cumulative.* No remedy herein conferred upon or reserved to lessor or lessee shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

22. *Lessor's right to insure.* Lessor may, at lessor's option and expense, maintain hazard insurance as its interests may appear covering any or all of the improvements constructed on the leased premises. In the event of any loss covered by any such insurance, then proceeds resulting therefrom shall belong exclusively to lessor, and lessor shall not be required to expend any of the said proceeds in restoring any improvement or in repairing any damage thereto.

23. *Lessor's right to lease adjoining areas.* Except as provided in paragraph 16 hereof, lessor retains the right to lease its lands adjoining the premises herein leased to such other tenant or tenants and upon such other terms as is may elect other than for the purpose of operating a modern retail super-market or for a purpose in competition with lessee.

24. *Short form lease.* This lease shall not be recorded but it is agreed that, upon request by either party the parties will execute a short form of this lease which may be recorded by either party.

25. *Paragraph headings.* The paragraph headings of this lease are inserted only for reference and do not affect the terms and provisions hereof.

26. *Rights of successors.* All of the rights and obligations of the parties under this lease shall bind and inure to the benefit of their respective heirs, executors, administrators, successors, sub-lessees, transferees and assigns.

In Witness Whereof, lessor has executed this instrument, and the lessee has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, as of the date hereinabove first written but actually on the 10th day of May, 1968.

/s/ T. H. Mayer
T. H. Mayer

/s/ Nicholas M. Mayer
Nicholas M. Mayer

(Lessor)

Safeway Stores Incorporated

(A Maryland corporation)

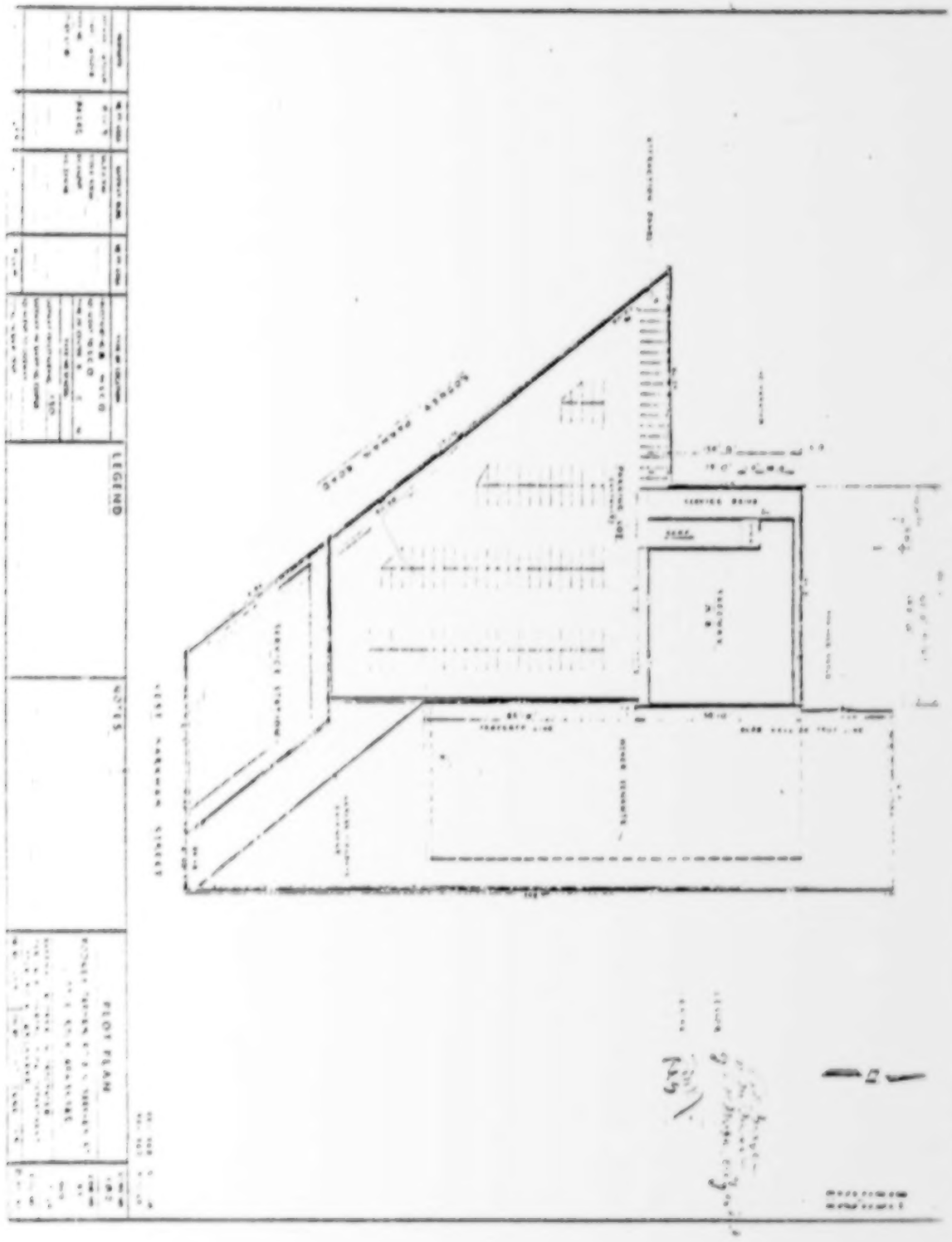
(Seal)

By: /s/ [illegible]
Title: *Assistant Vice President*

By: /s/ [illegible]
Title: *Assistant Secretary*

(Lessee)

(Acknowledgments Omitted in Printing)



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P. Ex. 48

INTER-OFFICE COMMUNICATION

To: Mr. James A. Rowland

For: Mr. W. H. Dodge

Location: Little Rock Division

From: Mr. B. H. Dean, Jr.

Location: Real Estate Finance
Administrative Office

Date: May 13, 1969

Subject: Store #182—105 N. Rodney Parham Road
Little Rock, Arkansas
Your letter of March 17, 1969

We have recently increased our sale-leaseback rental because of the increase in interest rates and our sale-leaseback terms are now as follows:

1. A twenty-year original term during which we pay a constant annual rental equal to 9.49% of the sale price of the property, such rental being in monthly installments in advance
2. Six five-year renewal options at a constant annual rental equal to 3% of the sale price of the property
3. We reserve the right to cancel under Article Fourteenth if we are going to abandon our operations on the premises, but, upon such cancellation, must offer to repurchase for the unamortized portion of the original sale price computed in accordance with the schedule attached to the lease, copy of which is enclosed
4. We do not pay real estate commissions on our sale-leaseback transactions and, in the event there are any such commissions, the same must be paid by the purchaser.

If our ground lessors, Messrs. T. H. Mayer and Nicholas M. Mayer, will be interested in purchasing the improvements on the above terms, we will be glad to enter negotiations with them for appropriate revisions in the ground lease dated May 1, 1968.

On the other hand, if Mr. Barnes has other clients who would be interested in purchasing the improvements on the above terms, subject to the ground lease, we will be pleased to furnish him with copies of our standard form of leasehold improvements lease, etc.

In either of the above connections, I note that, under the provisions of Paragraph 1, the Mayers have agreed to extend the original term of the ground lease for a period of twenty years from and after our sales of the improvements.

/s/ B. H. Dean, Jr.

This Lease, made as of the day of , 19 , between

,

hereinafter referred to as Lessor, and Safeway Stores, Incorporated, a Maryland corporation, hereinafter referred to as Lessee, relating to the real property leased by

,

hereinafter referred to as Landlord, by Lease dated the day of , 19 , recorded

,

hereinafter referred to as the Main Lease, to said Safeway Stores, Incorporated (hereinafter in its capacity as Lessee under the Main Lease sometimes referred to as Tenant), for a term of ( ) years commencing , and extending to and including the day of , 19 , with Tenant having the right to extend the term of the Main Lease for ( ) separate and additional pe-

riods of ( ) years each, which leasehold interest of Lessee under the Main Lease has been assigned to Lessor.

Witnesseth: That in consideration of the mutual agreements herein contained, the parties hereto do hereby covenant to and with each other as follows:

Article First (Property description): Lessor does hereby lease and sublease to Lessee the following described real property and the buildings and improvements thereon in the City of , County of , State of , designated as

, to-wit:

To Have and To Hold the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated, for an original term of ( ) years, commencing with the first day of , 19 , and extending to and including the last day of , 19 .

Article Second (Rent): Lessee does hereby agree to pay to Lessor, as the rent of the leased premises, the sum of Dollars ($) on the first day of each calendar month during said original term. Said payments shall be made by checks or drafts payable to

,

and mailed to , at

or by checks or drafts made payable to any other payee or mailed to any other address which Lessor, or any successor in interest of Lessor, may in writing designate. The rent for any fractional calendar month shall be prorated and paid on the first day of such fractional month.

ARTICLE THIRD (Warranties and covenants of Lessee): (a) Lessee represents and warrants to Lessor that the Main Lease is a valid and existing lease which is in full force and effect and that no default by Tenant exists under the Main Lease.

(b) Lessee shall comply, at its own cost and expense, with all the terms, covenants and conditions of the Main Lease, and shall pay, perform and discharge all duties and obligations whatsoever which are imposed upon Tenant under the Main Lease, including the obligation to indemnify Landlord thereunder, to the end that Lessor as assignee of Tenant's interest under the Main Lease, shall have no responsibility for compliance with the provisions of the Main Lease and shall be fully exonerated from all liability thereunder. Lessee will not cause or permit to occur any default under the Main Lease which would entitle Landlord to terminate the Main Lease.

(c) Lessee agrees that this lease is subject to all of the terms and conditions of the Main Lease.

ARTICLE THIRD A (Taxes, utility charges, etc.): Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments upon the leased premises which are payable during the original lease term or any renewal thereof. Taxes assessed during the term, but payable in whole or in installments after the termination of this lease, and assessments which are covered by bond, shall be adjusted and prorated and Lessor shall pay the prorated share thereof for the period subsequent to the term, and Lessee shall pay the prorated share thereof for the term of this lease.

Lessee also agreed to pay as additional rent any and all sums required to be paid to Landlord, or other party designated by Landlord, as rent pursuant to the provisions of the Main Lease, which payments shall be made directly to Landlord or said other party and shall be made by checks

payable to the order of Landlord or said other party. Lessee shall also make all other payments of every kind and description required to be made by Tenant under the Main Lease.

At the request of Lessor, Lessee shall, within sixty (60) days after such request, produce and exhibit to Lessor satisfactory evidence of the payment of any tax assessment or other charge constituting a lien on the leased premises which has become due and payable.

ARTICLE FOURTH (Installation and removal of fixtures; painting, signs, etc.): Lessee may place or install on and/or in the leased premises such fixtures and equipment as it shall deem desirable for the conduct of business therein, and may paint the building improvements such colors as it elects. Lessee shall have the exclusive right to paint and erect or authorize such signs as are permitted by the Main Lease in and over the leased premises and on the outside of the building improvements thereon. Personal property, fixtures and equipment used in the conduct of Lessee's business (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the building improvements) placed by Lessee or any subtenant or any predecessor in interest on or in said premises (even though placed prior to the commencement of said term) shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personalty and may be removed by Lessee at any time. Lessee may obliterate any signs or color effects installed by it. Any damage caused the leased premises by the removal of such property shall be repaired by Lessee at its expense.

ARTICLE FIFTH (Lessee's assumption of liability): Lessee agrees that it will indemnify and save Lessor harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or property on the leased premises, or upon the

adjoining streets and sidewalks. Lessee further agrees to indemnify and save Lessor harmless from any and all liability arising from any failure by Lessee to perform any of the agreements, terms, covenants or conditions of the Main Lease or of this lease on Lessee's part to be performed or in any manner arising out of or connected with the leasehold estate under the Main Lease. In addition, Lessee agrees to furnish Lessor with a certificate extending to Lessor the public liability insurance coverage maintained by Lessee.

Article Sixth (Repairs, alterations and improvements; state of repair on termination; future development and Lessee's options with respect thereto): Lessee agrees that Lessor shall be under no obligation to rebuild, replace, maintain or make any repairs to the leased premises, or to the improvements thereon during the lease term or any renewal thereof. Lessor agrees that Lessee may make, or permit to be made, such alterations and improvements to the leased premises as Lessee may deem desirable for the use thereof and may at Lessee's option, and without cost to Lessor, at any time and from time to time during the original lease term, or during any option period hereinafter provided for, do any one or more of the following:

I. Alter or remodel any building or improvements on the leased premises, provided the market value of any building or improvements so altered or remodeled is not adversely affected thereby, and/or

II. Construct an addition, or additions thereby, and/or

III. Raze any building or improvement situated on the leased premises and erect in the place thereof, a new building or improvement which shall be of a value not less than the market value of the building or improvement so razed at the time of its demolition, and/or

IV. Construct separate additional buildings thereon. Lessee agrees that it will not permit any mechanics', ma-

terialmen's or other liens to stand against the leased premises for work or materials furnished Lessee in connection with any such alterations, remodeling, additions or new construction, it being provided, however, that Lessee shall have the right to contest the validity of any such lien or claim, but upon a final determination of the validity thereof, Lessee shall immediately pay any judgment or decree rendered which may be a lien upon the leased premises or the leasehold estate against Lessee, with all proper costs and charges, and shall cause any such lien to be released of record without cost to Lessor. At the expiration or termination of this lease, or any extension or renewal thereof, Lessee shall leave the leased premises in good condition, allowance being made for ordinary wear and tear and damage by fire or other casualty excepted, and Lessee shall not be required to restore the leased premises to the condition in which the leased premises are in as of the commencement of the term hereof, it being agreed that Lessor shall accept the leased premises with such alterations, remodeling, additions or new construction as may have been made pursuant to the authorization contained in this article.

Should Lessee, during the original term hereof, alter, remodel, add to or construct new improvements pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost thereof is Twenty-Five Thousand and No/100 Dollars ($25,000.00) or more, Lessee shall, on completion of said improvements, offer to sell the same to Lessor for an amount not greater than the cost thereof. Should Lessor accept Lessee's offer, which acceptance shall be made in writing within sixty (60) days of the date of such offer, Lessor shall, within forty-five (45) days after Lessor's written acceptance thereof, pay the purchase price to Lessee and enter into a lease modification agreement covering the property hereby leased and such new improvements. The lease modification agreement shall

(1) provide for the payment, during the balance of the original term, of additional rental at Lessee's rental rate then in effect for sales of similar new properties, adjusted to reflect the difference in length of term; (2) increase the option rentals provided for in Article Twentieth hereof by an amount equal to one-twelfth (1/12th) of the purchase price of such new improvements multiplied by the rental rate then being paid by Lessee as rental during option terms, and (3) increase the purchase price provided for in Article Fourteenth hereof by an amount equal to the unamortized portion of said purchase price of such new improvements at the time of lease termination. Should Lessee's offer to sell such new improvements not be accepted by Lessor within said sixty (60) day period, Lessee shall have the option of permitting this lease to continue in effect without any modification or change whatsoever, or, in the alternative, Lessee may, at any time within six (6) months after the date of Lessee's offer to sell said new improvements, require Lessor to sell, convey and assign the leasehold estate under the Main Lease and the improvements located on the leased premises, to Lessee in the manner and upon the terms as set forth in Article Fourteenth hereof, except, however, that this lease shall in no event terminate until the leasehold estate under the Main Lease and the improvements located on the leased premises shall have been assigned, sold and conveyed to the Lessee and that the provisions of Article Fourteenth relative to Lessee discontinuing the use of the premises for grocery supermarket operations shall be inapplicable.

Article Seventh (Assigning and subletting): Lessee shall have the right to assign or transfer this lease or to underlease or sublet the whole or any part of said leased premises. Should Lessee assign this lease, it shall nevertheless remain liable to Lessor for full payment of the rent and Lessee's other obilgations under this lease.

Article Eighth (Holding over): If Lessee holds over or remains in possession of the leased premises after ex-

piration of this lease or after any sooner termination thereof, without any new lease of said premises being entered into between the parties hereto, or any option hereinafter contained being exercised by written notice, such holding over or continued possession shall, if rent is paid by Lessee and accepted by Lessor for or during any period of time Lessee holds over or remains in possession, create a tenancy from month to month only at the last monthly rental and upon the terms (other than length of term, or option for renewal, purchase or cancellation) herein specified, which may at any time be terminated by either party by thirty (30) days' written notice given to the other party.

Article Ninth (Quiet possession): Lessor covenants that Lessor is the owner of the leasehold estate under the Main Lease which it has acquired by assignment from Lessee and has full right to make this lease, and that so long as Lessor is the owner of such estate, Lessee shall have quiet and peaceful possession thereof as against any adverse claim of Lessor or any party claiming under Lessor, subject to all exceptions to title to the leased premises which may be set forth in the policy of leasehold title insurance about to be issued to Lessor in connection with the assignment of Lessee's interest as Tenant under the Main Lease to Lessor, and subject to Landlord's rights under the Main Lease.

Article Tenth (Lessee's default; Lessor's default): In case Lessee shall default in the performance of any covenant or agreement herein contained, and such default shall continue for fifteen (15) days after receipt by Lessee of written notice thereof given by Lessor, or the agent or attorney of Lessor, then Lessor, at the option of Lessor, may declare said term ended, and may re-enter upon the leased premises, either with or without process of law, and remove all persons therefrom. Lessee expressly agrees that the exercise by Lessor of the right of re-entry shall not be a

bar to or prejudice in any way any other remedies available to Lessor. In case Lessor shall default in the performance of any covenant or agreement herein contained, and such default shall continue for thirty (30) days after receipt by Lessor of written notice thereof given by Lessee, its agent or attorney, then no rent shall be paid or become payable under this lease for such time as such default shall continue after the expiration of said thirty (30) day period and Lessee, at its option, may (1) declare the term ended and vacate the leased premises and be relieved from all further obligations under this lease, or (2) pay any sum necessary to perform any obligation of Lessor hereunder and deduct the cost thereof, with interest, from the rents thereafter to become due hereunder.

Article Eleventh (Damage by fire, etc.): Lessee agrees that it will, during the original term hereof, or any renewal thereof, at its expense, keep in effect upon the leased premises, fire insurance with extended coverage endorsement, written by a responsible insurance company or insurance companies authorized to do an insurance business in the state in which the leased premises are located, in an amount equal to not less than ninety per centum (90%) of the insurable value of the building improvements thereon, said policy or policies of insurance to provide that payment for any losses covered under or by said policy or policies of insurance shall be made to Lessor and/or Lessee and/or any mortgagee and/or assignee designated by Lessor from time to time, as their respective interests may appear. Lessor agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the original term or any renewal thereof, Lessee may, at its option, rebuild or repair said building improvements, in which event all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. Should the fire or other casualty occur during the original term and Lessee elect not to rebuild or repair said building improvements, Lessee shall, within

ninety (90) days after such loss or damage, give written notice to Lessor of Lessee's intention to terminate this lease as provided for in Article Fourteenth hereof, and as a part of said notice shall offer to purchase the leasehold estate under the Main Lease and the improvements located on the leased premises upon the terms set out in said article. In the event said offer to purchase is accepted by Lessor and Lessor conveys, sells and assigns the leasehold estate under the Main Lease and the improvements located on the leased premises, all insurance proceeds shall be paid by said insurance company or companies to and retained by Lessee. However, should said offer to purchase not be accepted by Lessor and this lease be terminated as in said article provided, Lessee shall be deemed to any does hereby agree to relinquish all rights to the proceeds of any insurance in effect upon said building improvements and such proceeds shall be paid directly to Lessor by said insurance company or companies. Notwithstanding the foregoing, in the event any mortgagee requires that the proceeds be made payable to it, then, and in such event, the proceeds shall be so paid to such mortgagee upon condition that said mortgagee shall agree to pay the said proceeds to Lessee upon the restoration of the leased premises as in this article provided or upon the purchase of the leasehold estate under the Main Lease and the improvements located on the leased premises by Lessee as provided for in Article Fourteenth hereof.

Should the fire or other casualty occur during a renewal option term and Lessee elect not to rebuild or repair said building improvements, Lessee shall, within ninety (90) days after such loss or damage, give to Lessor a thirty (30) day notice, in writing, cancelling and terminating the renewal term then in effect. On expiration of said thirty (30) day notice, the renewal term shall cease and determine and all insurance proceeds shall be paid directly to Lessor by said insurance company or companies.

ARTICLE TWELFTH (Condemnation): In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the original term hereof condemn and acquire title to the leased premises, or any portion thereof, or to any easement therein, in or by condemnation proceedings pursuant to any law, general, special or otherwise, Lessee may elect, within ( ) days after such condemnation or acquisition of title by such person or corporation, to give written notice to Lessor of its intention to terminate this lease as provided for in Article Fourteenth hereof, and as a part of said notice shall offer to purchase the leasehold estate under the Main Lease and the improvements located on the leased premises from Lessor upon the terms set out in Article Fourteenth hereof. In the event such offer to purchase is accepted by Lessor within the time and in the manner in Article Fourteenth provided, and said leasehold estate under the Main Lease and the improvements located on the leased premises are purchased by Lessee, Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment as may be made. Should said offer to purchase not be accepted by Lessor and this lease be terminated as provided for in said article, any and all award or payment made in such condemnation proceedings in respect only of the buildings and improvements shall be paid to Lessor; provided, however, that Lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold interest in this lease and in the Main Lease. Should Lessee, however, remain in possession and not elect to give such notice of termination of this lease, this lease shall be deemed to continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, in respect to the

damage to Lessee's leasehold interest in this lease and in the Main Lease and also in respect to the damage to the buildings and improvements, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the buildings and improvements. With the proceeds of the award or payment so assigned to Lessee, Lessee shall make all repairs or alterations (if any) to the leased premises made necessary by such condemnation; should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor the remaining balance of such award or payment, such remaining balance being hereinafter referred to as net surplus award. Following the making of the condemnation award or payment, and on completion of the repairs or alterations, if any, made by Lessee as herein provided, the monthly rental for the calendar month following the date on which the net surplus award is paid to Lessor, and the rental payments for each month thereafter during the original term hereof, shall be reduced in an amount equal to one-twelfth (1/12th) of
per centum (%) of the net surplus award, if any, paid by Lessee to Lessor as in this article provided. Should the entire leased premises be condemned at any time during the original term hereof and this lease terminated by operation of law rather than through the exercise of Lessee's option to terminate as hereinabove provided, then, and in such event, Lessee shall be entitled to the entire condemnation award and Lessee shall pay to Lessor an amount equivalent to the applicable purchase price determined in the manner provided in Article Fourteenth, as of the date of the termination of this lease.

Should the condemnation occur during a renewal option term, Lessee shall, within ( ) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair the leased

premises. If Lessee elects to terminate the renewal term, Lessee shall give to Lessor ( ) days' notice, in writing, cancelling and terminating such renewal term. On expiration of said ( ) days' notice, the renewal term shall cease and determine. In such event, Lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, Lessee's leasehold interest in this lease and in the Main Lease and Lessor shall be entitled to receive and retain any award or payment made in respect of the buildings and improvements. Should Lessee, however, elect to remain in possession, the renewal term shall continue as to the remaining portion of the leased premises. In such event, Lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest in this lease and in the Main Lease and also in respect to the damage to the buildings and improvements, and Lessor shall assign, and Lessor does hereby assign and transfer to Lessee such award or payment made in respect of damage to the buildings and improvements. With the proceeds of the award or payment so assigned to Lessee, Lessee shall make all repairs or alterations (if any) to the leased premises made necessary by such condemnation; should the cost of such repairs or alterations be less than the award or payment so assigned to Lessee, Lessee shall pay to Lessor the remaining balance of such award or payment.

Anything in this Article Twelfth to the contrary notwithstanding, the right pursuant to this article of Lessee or Lessor to receive any award or payment made in a condemnation proceeding shall be subject to the rights of Landlord to receive said award or payment pursuant to Article of the Main Lease.

Article Thirteenth (Notices): Any notice provided for herein shall be given by registered United States mail, postage prepaid, addressed, if to Lessor, to the person to

whom the rent is then payable at the address to which the rent is then mailed, and, if to Lessee, to it at P.O. Box 660, Oakland 4, California. The person and the place to which notices are to be mailed may be changed from time to time by either party by written notice given to the other party.

Article Fourteenth (Lessee's right of termination): Lessor agrees that Lessee may, subject to the following conditions, at the option of Lessee, terminate this lease at any time during the original term hereof provided Lessee intends to cease grocery supermarket operations on the leases premises. In the event Lessee desires to exercise this option and to terminate this lease, it shall give written notice to Lessor of its intention to terminate this lease and as a part of such notice, shall offer to purchase Lessor's interest from Lessor for the applicable price computed in accordance with the schedule attached hereto and marked Exhibit "A", less the amount of any net surplus award or awards received by Lessor under the terms of Article Twelfth hereof.

In the event Lessor elects to accept said offer to purchase, Lessor shall, within ( ) days after the date of Lessee's notice to Lessor, deliver to Lessee written notice of such acceptance, and shall open or cause an escrow to be opened with a bank, trust company or title company, hereinafter referred to as escrow holder, and shall deposit in said escrow an instrument conveying, selling and assigning the Main Lease, and such other instruments and authorizations as may be necessary to convey to, and vest in Lessee such title to the Main Lease and the buildings and improvements upon the leased premises as that Lessee will upon the escrow completion be able to obtain from a title insurance company satisfactory to Lessee, a leasehold policy of title insurance in the amount of the purchase price paid by Lessee, insuring Lessee, or if title insurance

is not available, a title opinion written by an attorney designated by Lessee substantiating that it is the unencumbered owner of the Main Lease, free and clear of any mortgages or deeds of trust (which shall be released or reconveyed of record by Lessor in the escrow settlement) and free and clear of any other liens, charges, encumbrances or exceptions, except such as may have been in existence at the time of Lessor's acquisition of title to the Main Lease or as may have been created or suffered by Lessee. Lessor shall immediately notify Lessee of the opening of the escrow and Lessee shall, within ten (10) days after receipt of said notice and approval by Lessee of Lessor's title, deliver to said escrow holder, the purchase price, with instructions to deliver the same to Lessor when, upon recording the necessary instruments, it will be in a position to issue, or to obtain for Lessee, the leasehold policy of title insurance or attorney's opinion as hereinabove provided. In the event the title of Lessor is found to be imperfect or to be clouded so that title cannot be conveyed to Lessee as hereinabove provided, Lessor agrees to take proper proceedings to remove or correct any such defect so that title will vest in Lessee as herein provided for, such proceeding to be completed by not more than ( ) days after the date of Lessee's notice of termination and offer to purchase. If Lessee purchases the Main Lease as herein provided, Lessee shall pay rent to the date of its purchase of said Main Lease and Lessee shall also pay, for the account of Lessor, the amount of the prepayment penalty, if any, that Lessor may become obligated to pay in connection with the prepayment of any mortgages or deeds of trust to which the property may be subject, it being provided that such prepayment penalty shall not exceed the lesser of two per centum (2%) of the purchase price to be paid by Lessee as hereinabove provided or two per centum (2%) of the unpaid balance of any such mortgage or deed of trust; and Lessee shall also pay all charges covering the escrow fee, the recording fees,

the premium for a leashold policy of title insurance, the abstract continuation charge and the cost of the documentary internal revenue stamps and any applicable state or local taxes on transfers of interests in realty and other like charges. Lessee further agrees that if Lessee purchases the Main Lease as herein provided, Lessee shall cease grocery supermarket operations on the Leased premises within three (3) months after the date Lessee acquires title to the Main Lease.

Should written notice of the acceptance of Lessee's offer to purchase, signed by Lessor, not be received within ( ) days after the date of Lessee's notice to Lessor, or should Lessor, after having accepted Lessee's offer to purchase, be unable to convey title to the Main Lease to Lessee, as hereinbefore set out within the ( ) day time period herein limited, then, in either such event, this lease shall terminate and end at the expiration of ( ) days after the days of Lessee's notice of termination to Lessor. In the event of such termination as provided for herein, all parties hereto shall be discharged from further liability by reason of this lease and this lease shall be of no further force or effect. Lessee shall pay rent to the date of termination, and shall vacate and remove its property from the leased premises by such date of termination, and as of such date proper adjustment shall be made in respect of taxes and unexpired insurance premiums.

ARTICLE FIFTEENTH (Bankruptcy): Should Lessee file any petition or institute any proceedings under the Bankruptcy Act, as such Act now exists or under any amendment thereof which be enacted, or under any other Act or Acts, either as a bankrupt an insolvent, wherein or whereby Lessee seeks to be adjudicated a bankrupt or to be discharged from any or all of its debts, or to effect a plan of reorganization, or for any other similar relief, or if any such petition or pro-

ceedings of the same or similar kind or character be filled or taken against Lessee, or if any receiver for all or a substantial part of the business of Lessee shall be appointed by any court, and such petition or proceeding shall not be set aside or dismissed or the appointment of said receiver revoked within thirty (30) days, then, in any of such events, Lessor may, at Lessor's option, cancel and terminate this lease on the giving to Lessee of a thirty (30) days' notice in writing.

ARTICLE SIXTEENTH (Lessor's right of entry): Lessor reserves the right to enter upon the leased premises during business hours at any time to inspect the same or to make such repairs as Lessor may deem advisable (even though the same may not be required by this lease), or for the purpose of exhibiting the same to persons wishing to purchase the same. Lessor also reserves the right, at any time within thirty (30) days next preceding the expiration of the term hereby granted, or any renewal thereof, provided said term has not been extended by Lessee's exercise of th option privileges contained in Article Twentieth hereof, to place notices on the front of the leased premises, offering said leased premises "to let" or "for sale", and such notice or notices shall not be removed by Lessee, or Lessee's agents or employees. Such notices, however, shall not be placed upon the doors or windows of the building improvements.

ARTICLE SEVENTEENTH (Compliance with laws): Lessee agrees throughout the original term of this lease, or any renewal thereof, to comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction of the leased premises. Lessee may contest the validity of any such laws, ordinances, orders, rules, regulations and requirements but shall indemnify and hold Lessor harmless against the consequences of any violation thereof by Lessee.

ARTICLE EIGHTEENTH (Lessor's remedies): No remedy herein conferred upon or reserved to Lessor or to Lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE NINETEENTH (Article headings): The article headings herein contained are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect the terms and provisions hereof.

ARTICLE TWENTIETH (Lessee's option privileges):

less any net surplus award paid to Lessor under Article Twelfth hereof, and upon the terms (other than length of term and monthly rental) herein specified. These options shall be exercised by written notice given to Lessor or delivered or mailed to Lessor, at the address to which notice shall be sent as provided in Article Thirteenth, at least six (6) months before the expiration of the original term hereof, or, in the event Lessee has previously exercised one or more options herein given, such notice shall be given at least six (6) months before the expiration of the option term then in effect. The parties hereto agree that a new lease need not be executed upon the exercise of any of these options, but that this lease will remain in full force and effect, changed only as to the matters specified in this article, and except that Lessee may, on the giving to Lessor of a six (6) months' written notice, cancel any option term then in effect.

ARTICLE TWENTY-FIRST (Lessor's agreement to extend Main Lease): Lessor agrees that if upon the exercise by Lessee of any option herein provided, the term hereof as extended by the exercise of such option shall exceed the

original term of the Main Lease or the option term thereof then in effect, Lessor will promptly exercise the necessary option to extend the term of said Main Lease, and in the event Lessor fails to exercise such option, Lessee shall have the right to do so.

Article Twenty-Second (Covenants re termination Main Lease): Lessor covenants and agrees that it will not, prior to the expiration or sooner termination of the initial term hereof, or, in the event Lessee exercises the option or options to renew herein contained, prior to the expiration or sooner termination of said renewal term or terms, exercise any option or right to terminate said Main Lease without first obtaining the written consent of Lessee. If, however, Lessee is in default under the provisions of this lease and permits such default to continue in effect for thirty (30) days after receipt of notice thereof from Lessor in writing, then Lessor shall have the right to terminate said Main Lease without first obtaining the written consent of Lessee. Before exercising such right of termination, however, Lessor shall first deliver or mail to Lessee a thirty (30) days' written notice of Lessor's intention to terminate said Main Lease, providing in such notice that Lessee shall have an option during said thirty (30) day period to purchase from Lessor said Main Lease and the buildings and improvements on the leased premises for the price and upon the terms specified in Article Fourteenth hereof.

Article Twenty-Third (Lessor's indemnification of Lessee): Lessor covenants and agrees that in the event this lease is terminated during the original term thereof, and in the further event that upon said termination, Lessor rejects Lessee's offer to purchase the Main Lease, as referred to in Article Fourteenth hereof and does not convey the buildings and improvements and reassign the Main Lease to Lessee, then, and in such event, Lessor will thenceforth pay to Landlord all rentals that become due

and perform all of the obligations of the Tenant under the terms and provisions of said Main Lease, and Lessor will indemnify and hold Lessee harmless of and from any and all loss or damage that Lessee may suffer as a result of Lessor's breach of any of the covenants and agreements contained in said Main Lease to be performed by Tenant.

Lessee agrees that upon the termination of the original term of this lease by lapse of time, or, in the event Lessee exercises the option or options to renew herein contained, upon the expiration or sooner termination of said renewal term or terms, Lessor shall have the election upon notice to Lessee (1) to reassign the Main Lease to Lessee and convey the buildings and improvements then on the leased premises to Lessee, in which event Lessee shall accept the assignment and conveyance and thereafter Lessee shall perform and abide by the provisions of the Main Lease, including payment of all rent under said Main Lease, or (2) that Lessor may elect not to reassign the Main Lease and convey the buildings and improvements to Lessee, in which event thereafter Lessor shall pay the rent and perform all of the other obligations of the Main Lease and shall indemnify and hold Lessee harmless of and from any and all loss or damage that Lessee may suffer as a result of Lessor's breach of any of the covenants and agreements contained in said Main Lease to be performed by Tenant. Such election shall be made by Lessor at least ( ) days prior to the expiration by lapse of time of the original term of this lease, or at least ( ) days prior to the expiration of any renewal term either by lapse of time or by notice of termination. In the event no such notice of election is given to Lessee by Lessor, Lessor shall be deemed to have elected to reassign the Main Lease and to convey the buildings and improvements then on the leased premises to Lessee and shall proceed with due diligence to do so.

ARTICLE TWENTY-FOURTH (Rights of successors): Each and all of the covenants, terms, agreements and obligations of this lease shall extend to and bind and inure to the benefit of the heirs, the personal representatives, the successors and/or assigns of the lessor, and to the successors and/or assigns of the lessee; that herein the singular number includes the plural and the masculine gender includes the feminine and the neuter.

P. Ex. 49

SAFEWAY STORES, INCORPORATED

July 28, 1971

REGISTERED MAIL

Mr. T. H. Mayer and
Mr. Nicholas M. Mayer
c/o C. V. Barnes, Agent
P. O. Box 3546
Little Rock, Arkansas 72203

Re: Safeway Store # 182
NEC Markham St. & R. Parham Rd.
Little Rock, Arkansas

Gentlemen:

Safeway has determined to sell the building improvements placed upon the above premises leased from you pursuant to the terms of that certain Ground Lease dated May 1, 1968, and has received an acceptable, bona fide offer to purchase same from a third party. Under the terms of said Ground Lease, we are required to give you notice of our desire to sell the improvements and to offer same to you.

Accordingly, pursuant to Paragraph 15 of the Ground Lease dated May 1, 1968, Safeway hereby offers to sell the building improvements constructed on the above ground leased premises for a sales price of $235,000. The terms of the lease on the improvements would be twenty years running from the first day of the month following the date payment for the improvements is made to Safeway.

Rent during the original term would be in an amount sufficient to amortize the purchase price over the original term at a constant rate of 10.25%. This is equivalent to interest on the purchase price at the rate of approximately

8.28%. Rent during the option terms is based on 5% of the purchase price.

The lease which would be used would be our standard leasehold improvements lease, a copy of which is enclosed for your ready reference.

If you should accept this offer which is made pursuant to Paragraph 15 of the Ground Lease, this company would convey to you its interest in the building improvements on the ground leased premises and would enter into a lease on the terms above mentioned using the form of lease attached. The transaction should be completed within thirty days after your acceptance of this offer. The attached lease would be completed in the following manner:

a) By inserting appropriate reference to the Ground Lease in the preamble of the lease.

b) By inserting the legal description of the ground leased property in the space provided in Article First of the lease.

c) By providing the second paragraph of Article First for an original term of twenty years commencing the first day of the month next following the date payment of the purchase price is received by Safeway.

d) By providing in Article Second for a monthly rental during the original twenty year term for a monthly rental equal to 1/12th of 10.25% of the purchase price.

e) To insert 10.25% in the blank space in Article Twelfth toward the bottom of Page 6.

f) By providing in Article Twentieth for one option running from the dates of termination of the original twenty year term to April 30, 1993 and for five options of five years each at a monthly rental equal to 1/12th of 5% of the purchase price.

g) By attaching as an Exhibit "A" to the lease an amortization schedule which will provide for the amortization of the purchase price over the twenty year original term based on an annual constant rate of 10.25% with rental payments monthly.

You are advised that if you should determine to accept the above offer to purchase the building improvements made by Safeway on the ground leased premises in accordance with the terms outlined above, notice of your acceptance of such offer shall be delivered to this company at this office within thirty days from the date of this letter, otherwise the offer shall be of no further force or effect and your right of first refusal to purchase these building improvements under the terms of Paragraph 15 of the Ground Lease shall be terminated.

We shall appreciate hearing from you on the above matter at your early convenience.

Very truly yours,

/s/ JAMES B. BOLEN, JR.
James B. Bolen, Jr.
Attorney

This Lease, made the day of
19 , between
hereinafter referred to as lessor, and SAFEWAY STORES, INCORPORATED, a Maryland corporation, hereinafter referred to as lessee;

WITNESSETH: That in consideration of the mutual agreements herein contained, the parties hereto do hereby covenant to and with each other as follows:

Property Description

ARTICLE FIRST: Lessor does hereby lease to lessee the following described real property and the buildings and improvements thereon in the City of ,
County of , State of ,
designated as , to-wit:

Term

TO HAVE AND TO HOLD the above described premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated, for an original term of years, commencing with the first day of , 19 , and extending to and including the last day of , 19 .

Rent

ARTICLE SECOND: Lessee does hereby agree to pay to lessor, as the rent of the leased premises, the sum of
dollars ($)
on the first day of each calendar month during said original term. Said payments shall be made by checks or drafts payable to ,
and mailed to at

or by checks or drafts made payable to any other payee or mailed to any other address which lessor, or any successor

in interest of lessor, may in writing designate. The rent for any fractional calendar month shall be prorated and paid on the first day of such fractional month.

Taxes, utility charges, etc.

ARTICLE THIRD: Lessee agrees that it will pay all charges for electricity, water, gas, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments upon the leased premises which are payable during the original lease term or any renewal thereof. Taxes assessed during the term, but payable in whole or in installments after the termination of this lease, and assessments which are covered by bond, shall be adjusted and prorated and lessor shall pay the prorated share thereof for the period subsequent to the term, and lessee shall pay the prorated share thereof for the term of this lease.

Installation and removal of fixtures; painting, signs, etc.

ARTICLE FOURTH: Lessee may place or install on and/or in the leased premises such fixtures and equipment as it shall deem desirable for the conduct of business therein, and may paint the building improvements such colors as it elects. Lessee shall have the exclusive right to paint and erect or authorize signs in and over the leased premises and on the outside of the building improvements thereon. Personal property, fixtures and equipment used in the conduct of lessee's business (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the building improvements) placed by lessee or any subtenant or any predecessor in interest on or in said premises (even though placed prior to the commencement of said term), shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personalty and may be removed by lessee at any time. Lessee may obliterate any signs or color effects installed by it. Any damage caused the leased premises by the removal of such property shall be repaired by lessee at its expense.

Lessee's assumption of liability

ARTICLE FIFTH: Lessee agrees that it will indemnify and save lessor harmless from any and all liability, damage, expense, cause of action, suits, claims, or judgments arising from injury to person or property on the leased premises, or upon the adjoining streets and sidewalks, except such as may arise out of the willful or negligent act of lessor, or lessor's agents or employees.

Repairs, alterations, and improvements; state of repair on termination; future development and lessee's options with respect thereto

ARTICLE SIXTH: Lessee agrees that lessor shall be under no obligation to rebuild, replace, maintain or make any repairs to the leased premises, or to the improvements thereon during the lease term or any renewal thereof. Lessor agrees that lessee may make, or permit to be made, such alterations and improvements to the leased premises as lessee may deem desirable for the use thereof and may, at lessee's option and without cost to lessor, at any time and from time to time during the original lease term, or during any option period hereinafter provided for, do any one or more of the following:

I. Alter or remodel any building or improvements on the leased premises, provided the market value of any building or improvements so altered or remodeled is not adversely effected thereby, and/or

II. Construct an addition, or additions thereto, and/or

III. Raze any building or improvement situated on the leased premises and erect in the place thereof, a new building or improvement which shall be of a value not less than the market value of the building or improvement so razed at the time of its demolition.

At the expiration or termination of this lease, or any extension or renewal thereof, lessee shall leave the leased premises in good condition, allowance being made for ordinary wear and tear and damage by fire, or by earthquake, or by the elements, excepted, and lessee shall not be required to restore the leased premises to the condition in which the leased premises are in as of the commencement of the term hereof, it being agreed that lessor shall accept the leased premises with such alterations, remodeling, additions, or new construction, as may have been made pursuant to the authorization contained in this article. Lessee agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the leased premises for work or materials furnished lessee in connection with any such alterations; remodeling, additions or new construction, it being provided, however, that lessee shall have the right to contest the validity of any such lien or claim, but upon a final determination of the validity thereof, lessee shall immediately pay any judgment or decree rendered against lessee, with all proper costs and charges, and shall cause any such lien to be released of record without cost to lessor.

Should lessee, during the original term hereof, alter, remodel, add to, or construct new improvements pursuant to the provisions of subparagraphs I, II or III hereof, and provided the cost thereof is Twenty-five Thousand and No/100 Dollars ($25,000.00), or more, lessee may, on completion of said improvements, offer to sell the same to lessor for an amount not greater than the cost thereof. Should lessor accept lessee's offer, which acceptance shall be made in writing within sixty (60) days of the date of such offer, lessor shall, within forty-five (45) days after lessor's written acceptance thereof, pay the purchase price to lessee and enter into a lease modification agreement covering the property hereby leased and such new improvements. The lease modification agreement shall (1) provide for the payment, during the balance of the original term, of additional rental at lessee's rental rate then in effect for sales of similar new properties, adjusted to reflect the difference in length of term; (2) increase the option rentals provided for in article Seventeenth hereof by an amount equal to one-twelfth (1/12th) of the purchase price of such new improvements multiplied by the

rental rate then being paid by lessee as rental during option terms; and (3) increase the purchase price provided for in article Fourteenth hereof by an amount equal to the unamortized portion of said purchase price of such new improvements at the time of lease termination. Should lessee's offer to sell such new improvements and be accepted by lessor within said sixty (60) day period, lessee shall have the option of permitting this lease to continue in effect without any modification or change whatsoever or, in the alternative, lessee may, at any time within six (6) months after the date of lessee's offer to sell said new improvements, require lessor to sell the leased premises, including the new improvements erected thereon, to lessee in the manner, and upon the terms as set forth in article Fourteenth hereof, except, however, for the provision in said article which permits lessor to terminate this lease and refuse to sell the leased premises and the provision whereby lessee agrees to cease grocery supermarket operations on the leased premises within three (3) months after acquiring title, both of which provisions shall be wholly inoperative.

Assigning and subletting

ARTICLE SEVENTH: Lessee shall have the right to assign or transfer this lease or to underlease or sublet the whole or any part of said leased premises. Should lessee assign this lease it shall nevertheless remain liable to lessor for full payment of the rent and lessee's other obligations under this lease.

Holding over

ARTICLE EIGHTH: If lessee holds over or remains in possession of the leased premises after expiration of this lease or after any sooner termination thereof, without any new lease of said premises being entered into between the parties hereto, or any option hereinafter contained being

exercised by written notice, such holding over or continued possession shall, if rent is paid by lessee, and accepted by lessor for or during any period of time lessee holds over or remains in possession, create a tenancy from month to month only at the last monthly rental and upon the terms (other than length of term, or option for renewal, purchase or cancellation) herein specified, which may at any time be terminated by either party by thirty (30) days' written notice given to the other party.

Quiet possession

ARTICLE NINTH: Lessor covenants that lessor is seized of the leased premises and has full right to make this lease, and that so long as lessor is the owner of the leased premises, lessee shall have quiet and peaceful possession thereof as against any adverse claim of lessor or any party claiming under lessor.

Lessee's default; lessor's default

ARTICLE TENTH: In case lessee shall default in the performance of any covenant or agreement herein contained, and such default shall continue for thirty (30) days after receipt by lessee of written notice thereof given by lessor, or the agent or attorney of lessor, then lessor, at the option of lessor, may declare said term ended, and may reenter upon the leased premises either with or without process of law, and remove all persons therefrom. Lessee expressly agrees that the exercise by lessor of the right of re-entry shall not be a bar to or prejudice in any way any other legal remedies available to lessor. In case lessor shall default in the performance of any covenant or agreement herein contained, and such default shall continue for thirty (30) days after receipt by lessor of written notice thereof given by lessee, its agent or attorney, then no rent shall be paid or become payable under this lease for such time as such default shall continue after the expiration of said thirty (30) days' period and lessee, at its option, may

(1) declare the term ended and vacate the leased premises and be relieved from all further obligations under this lease, or (2) pay any sum necessary to perform any obligation of lessor hereunder, and deduct the cost thereof, with interest, from the rents thereafter to become due hereunder. The performance of each and every agreement herein contained on the part of lessor shall be a condition precedent to the right of lessor to collect rent hereunder or to enforce this lease as against lessee.

Damage by fire, etc.

ARTICLE ELEVENTH: Lessee agrees that it will, during the original term hereof, or any renewal thereof, at its expense, keep in effect upon the leased premises, fire insurance with extended coverage endorsement, written by a responsible insurance company or insurance companies authorized to do an insurance business in the state in which the leased premises are located, in an amount equal to not less than eighty per centum (80%) of the insurable value of the building improvements thereon, said policy or policies of insurance to provide that payment for any losses covered under or by said policy or policies of insurance shall be made to lessor and/or lessee and/or any mortgagee and/or assignee designated by lessor from time to time, as their respective interests may appear. Lessor agrees that in the event of loss of or damage to said building improvements by fire or other casualty during the original term or any renewal thereof, lessee may, at its option, rebuild or repair said building improvements, in which event all insurance proceeds shall be paid by said insurance company or companies to and retained by lessee. Should the fire or other casualty occur during the original term and lessee elect not to rebuild or repair said building improvements, lessee shall, within ninety (90) days after such loss or damage, give written notice to lessor of lessee's intention to terminate this lease as provided for

in article Fourteenth hereof, and as a part of said notice shall offer to purchase the leased premises upon the terms set out in said article. In the event said offer to purchase is accepted by lessor and said property purchased by lessee, all insurance proceeds shall be paid by said insurance company or companies to and retained by lessee. However, should said offer to purchase not be accepted by lessor and this lease be terminated as in said article provided, lessee shall be deemed to and does hereby agree to relinquish all rights to the proceeds of any insurance in effect upon said building improvements and such proceeds shall be paid directly to lessor by said insurance company or companies. Notwithstanding the foregoing, in the event any mortgagee requires that the proceeds be made payable to it, then and in such event the proceeds shall be so paid to such mortgagee upon condition that said mortgagee shall agree to pay the said proceeds to lessee upon the restoration of the leased premises as in this article provided or upon the purchase of the leased premises by lessee as provided for in article Fourteenth hereof.

Should the fire or other casualty occur during a renewal option term and lessee elect not to rebuild or repair said building improvements, lessee shall, within ninety (90) days after such loss or damage give to lessor a thirty (30) days' notice, in writing, cancelling and terminating the renewal term then in effect. On expiration of said thirty (30) days' notice, the renewal term shall cease and determine and all insurance proceeds shall be paid directly to lessor by said insurance company or companies.

Condemnation

ARTICLE TWELFTH: In the event that any person or corporation, municipal, public, private or otherwise, shall at any time during the original term hereof condemn and acquire title to the leased premises, or any portion thereof, or to any easement therein, in or by condemnation pro-

ceedings pursuant to any law, general, special or otherwise, lessee may elect within thirty (30) days after such condemnation or acquisite of title by such person or corporation, to give written notice to lessor of its intention to terminate this lease as provided for in article Fourteen hereof, and as a part of said notice shall offer to purchase the leased premises from less or upon the terms set out in article Fourteenth hereof. In the event such offer to purchase is accepted by lessor within the time and in the m manner in article Fourteenth provided, and said leased premises are purchased by lessee, lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, and Lessor shall assign, and lessor does hereby assign and transfer to lessee such award or payment as may be made. Should said offer to purchase not be accepted by lessor and this lease be terminated as provided for in said article, any and all award or payment made in such condemnation proceedings in respect only of the leased premises shall be paid to lessor; provided, however, that lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damag to, lessee's leasehold interest. Should lessee, however, remain in posssion and not let to give such notice of termination of this lease, this lease shall be deemed to continue as to the remaining portion of the leased premises. In such event, lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, in respect to the damage to Lessee's leasehold interest and also in respect to the damage to the leased premises, and lessor shall assign, and lessor does hereby assign and transfer to lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to lessee, lessee shall made all repairs or alterations (if any) to the leased premises made necessary by such condemnation, should the cost of such repairs or alterations be less than the award or payment so assigned to lessee,

lessee shall pay to Lessor the remaining balance of such award or payment, such remaining balance being hereinafter referred to as net surplus award. Following the making of the condemnation award or payment, and on completion of the repairs or alternations, if any, made by lessee as herein provided, the monthly rental for the calendar month following the date on which the net surplus award is paid to lessor, and the rental payments for each month thereafter during the original term hereof, shall be reduced in an amount equal to one-twelfth (1/12th) of per centum (%) of the net surplus award, if any, paid by lessee to lessor as in this article provided. Should the entire leased premises be condemned at any time during the original term hereof and this lease terminated by operation of law rather than through the exercise of lessee's option to terminate as hereinabove provided, then, and in such event, lesse shall be entitled to the entire condemnation award and lessee shall pay to lessor an amount equivalent to the applicable purchase price determined in the manner provided in article Fourteenth, as of the date of the termination of this lease.

Should the condemnation occur during a renewal option term, lessee shall, within thirty (30) days after such condemnation, either (a) terminate the renewal term then in effect, or (b) remain in possession and repair the leased premises. If lessee elects to terminate the renewal term, lessee shall give to lessor thirty (30) days' notice, in writing, cancelling and terminating such renewal term. On expiration of said thirty (30) days' notice the renewal term shall cease and determine. In such event, lessee shall be entitled to receive and retain any award or payment made in respect of the loss of, or damage to, lessee's leasehold interest and lessor shall be entitled to receive and retain any award or payment made in respect of the leased premises. Should lessee, however, elect to remain in possession, the renewal term shall continue as to the

remaining portion of the leased premises. In such event, lessee shall be entitled to and shall receive any and all award or payment made in said condemnation proceedings, in respect to the damage to lessee's leasehold interest and also in respect to the damage to the leased premises, and lessor shall assign, and lessor does hereby assign and transfer to lessee such award or payment made in respect of damage to the leased premises. With the proceeds of the award or payment so assigned to lessee, lessee shall make all repairs or alterations (if any) to the leased premises made necessary by such condemnation; should the cost of such repairs or alterations be less than the award or payment so assigned to lessee, lessee shall pay to lessor the remaining balance of such award or payment.

Notices

ARTICLE THIRTEENTH: Any notice provided for herein shall be given by registered United States mail, postage prepaid, addressed, if to lessor, to the person to whom the rent is then payable at the address to which the rent is then mailed, and, if to lessee, to it at P.O. Box 660, Oakland 4, California. The person and the place to which notice are to be mailed may be changed from time to time by either party by written notice given to the other party.

Lessee's right of termination

ARTICLE FOURTEENTH: Lessor agrees that lessee may, subject to the following conditions, at the option of lessee, terminate this lease at any time during the original term hereof provided lessee intends to cease grocery supermarket operations on the leased premises. In the event lessee desires to exercise this option and to terminate this lease, it shall give written notice to lessor of its intention to terminate this lease and as a part of such notice, shall offer to purchase the leased premises from lessor for the applicable price computed in accordance with the schedule attached hereto and marked Exhibit "A", less the amount of any net surplus award or awards received by lessor under the terms of article Twelfth hereof.

In the event lessor elects to accept said offer to purchase, lessor shall within sixty (60) days after the date of lessee's notice to lessor, deliver to lessee written notice of such acceptance, and shall open or cause an escrow to be opened with a bank, trust company or title company, hereinafter referred to as escrow holder, and shall deposit and such title to the leased premises as that lessee will in said escrow a properly executed grant or warranty deed, upon the escrow completion be able to obtain from a title insurance company satisfactory to lessee, an owner's policy of title insurance in the amount of the purchase price paid by lessee, insuring lessee, or if title insurance is not available, a title opinion written by an attorney designated by lessee substantiating that it is the unencumbered fee title owner of the leased premises, free and clear of any mortgages or deeds of trust (which shall be released or reconveyed of record by lessor in the escrow settlement) and free and clear of any other liens, charges, encumbrances or exceptions, except such as may have been in existence at the time of lessor's acquisition of title to the leased premises or as may have been created or suffered by lessee. Lessor shall immediately notify lessee of the opening of the escrow and lessee shall, within ten (10) days after receipt of said notice and approval by lessee of lessor's title, deliver to said escrow holder, the purchase price, with instructions to deliver the same to lessor when, upon recording the deed, it will be in a position to issue, or to obtain for lessee, the owner's policy of title insurance or attorney's opinion as hereinabove provided. In the event the title of lessor is found to be imperfect or to be clouded so that title cannot be conveyed to lessee as hereinabove provided, lessor agrees to take proper proceedings to remove or correct any such defect so that title will vest in lessee as herein provided for such

proceeding to be completed by not more than seventy-five (75) days after the date of lessee's notice of termination and offer to purchase. If lessee purchases the leased premises as herein provided, lessee shall pay rent to the date of its purchase of said property and lessee shall also pay, for the account of lessor, the amount of the prepayment penalty, if any, that lessor may become obligated to pay in connection with the prepayment of any mortgages or deeds of trust to which the property may be subject, it being provided that such prepayment penalty shall not exceed the lessor of two per centum (2%) of the purchase price to be paid by lessee to lessor as hereinabove provided or two percentum (2%) of the unpaid balance of any such mortgage or deed of trust; and lessee shall also pay all charges covering the escrow fee, the recording fees, the premium for an owner's policy of title insurance, the abstract continuation charge, and the cost of the documentary internal revenue stamps and any applicable state tax stamps and other like charges. Lessee further agrees that if lessee purchases the leased premises as herein provided, lessee shall cease grocery supermarket operations on the leased premises within three (3) months after the date lessee acquires title to the leased premises.

Should written notice of the acceptance of lessee's offer to purchase, signed by lessor, not be received by lessee within sixty (60) days after the date of lessee's notice to lessor, or should lessor, after having accepted lessee's offer to purchase, be unable to convey title to the leased premises to lessee, as hereinbefore set out within the seventy-five (75) day time period herein limited, then in either such event this lease shall terminate and end at the expiration of ninety (90) days after the date of lessee's notice of termination to lessor. In the event of such termination as provided for herein, all parties here shall be discharged from further liability by reason of this lease and this lease shall be of no further force or effect. Lessee

shall pay rent to the date of termination, and shall vacate and remove its property from the leased premises by such date of termination, and as of such date proper adjustment shall be made in respect of taxes and unexpired insurance premiums.

Bankruptcy

ARTICLE FIFTEENTH: Should lessee file any petition or institute any proceedings under the Bankruptcy Act, either as such Act now exists or under any amendment thereof which may hereafter be enacted, or under any other Act or Acts, either as a bankrupt or as an insolvent, wherein or whereby lessee seeks to be adjudicated a bankrupt or to be discharged from any or all of its debts, or to effect a plan of reorganization, or for any other similar relief, or if any such petition or proceedings of the same or similar kind or character be filed or taken against lessee, or if any receiver for all or a substantial part of the business of lessee shall be appointed by any court, and such petition or proceeding shall not bet set aside or dismissed or the appointment of said receiver revoked within thirty (30) days, then, in any of such events, lessor may, at lessor's option, cancel and terminate this lease on the giving to lessee of a thirty (30) days' notice in writing.

Lessor's right of entry

ARTICLE SIXTEENTH: Lessor reserves the right to enter upon the leased premises during business hours at any time to inspect the same or to make such repairs as lessor may deem advisable (even though the same may not be required by this lease), or for the purpose of exhibiting the same to persons wishing to purchase the same. Lessor also reserves the right, at any time within thirty (30) days next preceding the expiration of the term hereby granted or any renewal thereof, provided said term has not been extended by lessee's exercise of the option privileges contained in article Seventeenth hereof, to place

notices on the front of the leased premises offering said leased premises "to let" or "for sale", and such notice or notices shall not be removed by lessee, or lessees agents or employees. Such notices, however, shall not be placed upon the doors or windows of the building improvements.

Lessee's option privileges

ARTICLE SEVENTEENTH: Lessor hereby grants to lessee, the right, at lessee's option, to extend the term of this lease for separate and additional periods of years each after the expiration of the term hereof at an annual rental payable in equal installments, equivalent to per centum (%) of dollars ($) less any net surplus award paid to lessor under article Twelfth hereof, and upon the terms (other than length of term and monthly rental) herein specified. These options shall be exercised by written notice given to lessor or delivered or mailed to lessor, at the address at which the rent is then payable, at least sixty (60) days before the expiration of the original term hereof, or, in the event lessee has previously exercised one or more options herein given, such notice shall be given at lease sixty (60) days before the expiration of the option term then in effect. The parties hereto agree that a new lease need not be executed upon the exercise of any of these options, but that this lease will remain in full force and article, and except that lessee may, on the giving to lessor effect, changed only as to the matters specified in this of a six (6) months written notice, cancel any option term then in effect.

Undeveloped parcel

ARTICLE EIGHTEENTH: Lessor agrees that lessee may improve and develop all or any part of Parcel II (hereinafter in this article referred to as Undeveloped Parcel)

of the real property herein described as an additional customers' parking lot at any time that lessee determines that such development is necessary or described in connection with lessee's operations on the leased premises. In the event lessee so improves and develops said Undeveloped Parcel, it shall, upon completion of said improvements, offer to sell the same to lessor for an amount not greater than the cost thereof to lessee. Should lessor accept lessee's offer, which acceptance shall be made in writing within sixty (60) days after the date of such offer, lessor shall, within forty-five (45) days after lessor's written acceptance thereof, pay the purchase price to lessee and enter into a lease modification agreement with lessee which shall (1) provide for an increase in the monthly rental under article Second hereof in an amount sufficient to fully amortize the purchase price of such improvements during the unexpired balance of the original lease term with interest at the rate of per centum (%) per annum; (2) increase the monthly installments of option rental under article Seventeenth hereof in an amount equal to one-twelfth (1/12th) of per centum (%) of said purchase price; and (3) increase the purchase price provided for in article Fourteenth hereof by an amount equal to the unamortized portion of the purchase price of such improvements at the time of lease termination.

Should lessor fail to accept lessee's offer to sell or to complete purchase of said improvements in the manner and within the time hereinabove provided, lessee shall have the right at any time thereafter during the original term of this lease to purchase said Undeveloped Parcel.

Lessor also agrees that if lessee at any time determines that it will not be necessary or desirable to improve and develop said Undeveloped Parcel as an additional customers' parking lot, then lessee shall have the right to purchase said Undeveloped Parcel, and further agrees

that if lessee at any time determines that it will be necessary and desirable to improve and develop only a portion of said Undeveloped Parcel as an additional customers' parking lot, then lessee shall have the right to purchase that portion of said Undeveloped Parcel that it determines not to improve and develop as an additional customers' parking lot.

Lessee agrees that if lessee has not improved and developed said Undeveloped Parcel, or any portion therof, as an additional customers' parking lot by the expiration of the first ten (10) years of the lease term, then lessee will, upon the written request of lessor, purchase said Undeveloped Parcel as an additional customers' parking lot by the expiration of the first ten (10) years of said lease term, then lessee will, upon the written request of lessor, purchase that portion of said Undeveloped Parcel that has not been improved and developed as an additional customers' parking lot.

In the event of a purchase by lessee of said Undeveloped Parcel, or any portion thereof, under the provisions of this article, the purchase shall be handled through an escrow and title shall be conveyed as provided in article Fourteenth hereof, the purchase price to be paid by lessee to lessor shall be an amount computed by multiplying the square foot area of the property so purchased by the sum of dollars ($), and the parties hereto shall enter a lease modification agreement which shall (1) exclude the property so purchased from the provisions of this lease; (2) decrease the monthly rental under article Second hereof by an amount equal to one-twelfth (1/12th) of per centum (%) of the purchase price paid by lessee to lessor; (3) decrease the monthly installments of option rental under article Seventeenth hereof by an amount equal to one-twelfth (1/12th) of per centum (%) of said purchase price paid by lessee to lessor; and (4) decrease the "Original Sale Price" specified in the schedule attached hereto and marked Exhibit "A" by the amount of said purchase price paid by lessee to lessor. Lessor in the deed by which lessor conveys said property to lessee may reserve easements and rights of way for all existing utilities that cross the parcel conveyed by lessor for the purpose of serving the balance of the leased premises retained by lessor, and shall convey to lessee all reasonable easements and rights of way for utility lines and other purposes across the portion of the leased premises retained by lessor that may be reasonably necessary to the development of the property conveyed to lessee.

Compliance with laws

ARTICLE NINETEENTH: Lessee agrees throughout the original term of this lease or any renewal thereof to comply with all laws, ordinances, orders, rules regulations and requirements of all governmental authorities having jurisdiction of the leased premises. Lessee may contest the validity of any such laws, ordinances, orders, rules, regulations and requirements but shall indemnify and hold lessor harmless against the consequences of any violation thereof by lessee.

Lessor's remedies

ARTICLE TWENTIETH: No remedy herein conferred upon or reserved to lessor or to lessee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Marginal notes

ARTICLE TWENTY-FIRST: The marginal notes herein contained are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this lease nor in any way affect the terms and provisions hereof.

Exhibit "A"

Column One: Number of Months Elapsed Since Beginning of Lease Term.

Column Two: Purchase Price For Each $10,000.00 of Original Sale Price.

Original Sale Price $

One	Two	One	Two	One	Two	One	Two
1	9981	61	8634	121	6700	181	3924
2	9963	62	8607	122	6662	182	3869
3	9944	63	8580	123	6623	183	3814
4	9925	64	8553	124	6584	184	3758
5	9906	65	8526	125	6545	185	3701
6	9887	66	8498	126	6505	186	3645
7	9868	67	8471	127	6466	187	3588
8	9848	68	8443	128	6426	188	3530
9	9829	69	8415	129	6385	189	3473
10	9809	70	8387	130	6345	190	3415
11	9789	71	8358	131	6304	191	3356
12	9769	72	8330	132	6263	192	3298
13	9749	73	8301	133	6222	193	3239
14	9729	74	8272	134	6181	194	3179
15	9709	75	8243	135	6139	195	3119
16	9689	76	8214	136	6097	196	3059
17	9668	77	8185	137	6055	197	2999
18	9648	78	8155	138	6013	198	2938
19	9627	79	8125	139	5970	199	2876
20	9606	80	8096	140	5927	200	2815
21	9585	81	8065	141	5884	201	2753
22	9564	82	8035	142	5841	202	2691
23	9543	83	8005	143	5797	203	2628
24	9522	84	7974	144	5753	204	2565
25	9500	85	7943	145	5709	205	2501
26	9478	86	7912	146	5664	206	2437
27	9457	87	7881	147	5619	207	2373

28	9435	88	7850	148	5574	208	2308
29	9413	89	7818	149	5529	209	2243
30	9391	90	7786	150	5483	210	2178
31	9368	91	7754	151	5437	211	2112
32	9346	92	7722	152	5391	212	2046
33	9324	93	7690	153	5345	213	1979
34	9301	94	7657	154	5298	214	1912
35	9278	95	7625	155	5251	215	1845
36	9255	96	7592	156	5204	216	1777
37	9232	97	7558	157	5156	217	1708
38	9209	98	7525	158	5108	218	1640
39	9185	99	7492	159	5060	219	1571
40	9162	100	7458	160	5012	220	1501
41	9138	101	7424	161	4963	221	1431
42	9114	102	7390	162	4914	222	1361
43	9091	103	7355	163	4865	223	1290
44	9066	104	7321	164	4815	224	1219
45	9042	105	7286	165	4765	225	1147
46	9018	106	7251	166	4715	226	1075
47	8993	107	7216	167	4665	227	1003
48	8969	108	7180	168	4614	228	930
49	8944	109	7145	169	4563	229	856
50	8919	110	7109	170	4511	230	783
51	8894	111	7073	171	4459	231	708
52	8869	112	7037	172	4407	232	634
53	8843	113	7000	173	4355	233	558
54	8818	114	6964	174	4302	234	483
55	8792	115	6927	175	4249	235	407
56	8766	116	6889	176	4196	236	330
57	8740	117	6852	177	4142	237	253
58	8714	118	6814	178	4088	238	176
59	8687	119	6777	179	4034	239	98
60	8661	120	6739	180	3979	240	0

20 Yr. 7¼%

P. Ex. 50

FRANK LYON COMPANY

April 12, 1968

Mr. Ed Penick, President
Worthen Bank & Trust Company
4th & Main Streets
Little Rock, Arkansas 72201

Dear Ed:

I understand and am in complete sympathy with your desire to have some person or corporation own the Worthen building that is acceptable to you.

Accordingly, before I, my immediate heirs, and my current working associates would ever sell Frank Lyon Company or lose control of Frank Lyon Company, I will contact you to see that the bank's interest, in having an acceptable owner of the building, is protected and will at that time sell the building to you or your nominee at a price which we will negotiate.

These transactions will be subject to your approval provided that your approval will not be unreasonably withheld.

Yours truly,

FRANK LYON COMPANY

/s/ FRANK LYON
Frank Lyon
Chairman of the Board

P. Ex. 51

CABOT, CABOT & FORBES EQUITY TRUST

April 26, 1974

Mr. Frank Lyon
Chairman of the Board
Frank Lyon Company
West 65th Street and Scott Hamilton Drive
Little Rock, Arkansas

Dear Mr. Lyon:

This past week my associates and I had an opportunity to visit Little Rock. We were particularly impressed by the Worthen Bank Building and learned, with interest, that you are the owner of this property. This letter is to introduce ourselves and to inquire if there may be some interest on your part in selling this property.

Cabot, Cabot & Forbes Equity Trust is a recently established real estate investment trust privately held at this time. (Cabot, Cabot & Forbes Land Trust, a sister company, is traded on the New York Stock Exchange.) The Equity Trust invests primarily in substantial and seasoned "landmark" properties, i.e. properties which have a preferred address within a local market due to excellence of design and high quality of tenancy.

The Equity Trust has great flexibility in structuring to investments and can purchase a variety of interests in a property, including a partial interest, a partnership position, or corporate stock. Payment can be structured for tax and other advantages to include a tax free exchange of stock, the issuance of convertible debt, as well as cash. Existing property management agreements can be continued or the Equity Trust can itself provide such management.

We believe the building is truly a fine property and the association of the Worthen Bank with the building a valuable one. In this type of transaction we would essentially be passive investors and in no way attempt to change the "identity" of the building or alter the existing arrangements between landlord and tenant.

It is interesting to note that another sister company, Cabot, Cabot & Forbes, owns and manages a number of high rise office structures throughout the country. Many of these have as their major tenants a bank, and usually the building has been named after the bank. Thus we are experienced in owning and managing bank related properties and are sensitive to the needs and requirements of tenants in these properties.

I hope this brief letter gives you an insight into our organization. I would appreciate the opportunity of exploring this in greater detail and am looking forward to hearing from you.

Very truly yours,

/s/ RUDY LANDRY
Rudy Landry
Investment Officer

P. Ex. 52

EXPLANATION OF ITEMS

FORM 886-A
SNAPOUT
FEBRUARY 1969

SCHEDULE NO. OR EXHIBIT

NAME OF TAXPAYER
Frank Lyon Company

YEAR/PERIOD ENDED
1969-1970

(b) Net Adjustments

Worthen Accounts	1969	$497,219.18
	1970	538,325.05

Summary of Income and Expense Accounts adjusted as follows:

	1969	1970
(1) Rental Income	$(48,527.01)	$(582,324.12)
(2) Interest Expense (1 mo with NYL, accrued)	40,162.50	478,801.53
(3) Depreciation	51,618.79	614,269.78
(4) Interest, Legal, Audit, etc., during construction	451,666.75	
(5) Interest Income	2,298.15	27,577.86
Totals, as above	$497,219.18	$ 538,325.05

Explanation—

(1), (2), (3), (4)—It has been determined based on the facts and circumstances that you are not the owner for tax purposes of any portion of the Worthen Building. Therefore, the income and expenses related to this building are not allowable to you for Federal income tax purposes.

(5)—You invested $500,000 in the Worthen Building, which transaction is considered to be a loan rather than an investment, since as stated above, the Worthen Building has been determined not to be your property. Computation of accrued interest is as follows:

Option price of Worthen Building, 11-30-80	$6,325,169.85
Loan Balance to New York Life Insurance, 11-30-80	5,521,813.36
Balance	$ 803,356.49
Cost	500,000.00
Gain	$ 303,356.49

This gain of $303,356.49 is considered the equivalent of interest income to be accrued over the (11) eleven-year period of the lease to the option date 11-30-80.

1969 Interest—303,356.49 ÷ 11 ÷ 1/12 = $2,298.15
1970 Interest—303,356.49 ÷ 11 = $27,577.86

D. Ex. 1

WORTHEN BANK & TRUST CO.

1969 Exhibit

EQUITY INTEREST IN LAND AND BUILDINGS

Land			$1,439,843.70
Parking deck			1,194,260.47
Office and bank building		$9,642,932.18	
Less sales proceeds from Frank Lyon Co.:			
N.Y. Life Ins. Co. (loan)	$7,140,000		
Lyon investment	500,000	7,640,000.00	2,002,932.18
Total cost (equity) to Worthen Bank and Trust Co. as of Dec. 1, 1969			$4,637,036.35

Equity and percentages:	Cost	%
Frank Lyon Co.	$ 7,640.000.00	62.23
Worthen Bank and Trust Co.	4,637,036.35	37.77
Totals	$12,277,036.35	100.00

D. Ex. 2

FRANK LYON CO. — WORTHEN BUILDING

CASH FLOW

Year		Rent Income	Loan Payments (Prin. & Int.)	Balance (Cash flow)
1969	1 mo	48,527.01	48,527.01	- 0 -
1970		582,324.12	582,324.12	
1971		"	"	"
1972		"	"	"
1973		"	"	"
1974		"	"	"
1975		"	"	"
1976		"	"	"
1977		"	"	"
1978		"	"	"
1979		"	"	"
1980	11 mo	533,797.11	533,797.11	- 0 -

TAX — CASH FLOW

3,458,174.85 × 25% = (864,543.71)
3,154,819.11 × 48% = 1,514,313.17

649,769.46

D. Ex. 3

FRANK LYON CO. — WORTHEN BUILDING
LOSS FROM RENTAL OPERATION

Year		Rental Income	Interest Exp. (Pd. on Building Note)	Other Exp. (Interim Financing)	Depr. (Accelerated Basis)
1969	1 mo	48,527.01	40,162.50	451,666.75	51,618.79
1970		582,324.12	478,801.52		614,271
1971		582,324.12	471,634.87		552,977
1972		582,324.12	463,971.97		498,575
1973		582,324.12	455,778.93		450,229
1974		582,324.12	447,018.36		407,202
1975		582,324.12	437,651.43		368,861
1976		582,324.12	427,636.04		334,641
1977		582,324.12	416,927.31		304,063
1978		582,324.12	405,547.24		276,693
1979		582,324.12	393,234.49		252,160
1980	11 mo	533,797.11	349,084.02		210,045
Totals		6,405,565.32	4,787,378.68	451,666.75	4,321,339.79

Overall Results—11 yr. period

Rent Income		6,405,565.32
Less:		
Interest Expense	4,787,378.68	
Other Expense—Interim Financing	451,666.75	
Depreciation—Accelerated Basis	4,321,339.00	
		9,560,384.43
RENTAL LOSS		3,154,819.41

D. Ex. 4

FRANK LYON CO. — WORTHEN BUILDING

GAIN ON SALE 1980

If 1980 Option Is Exercised

Sales Price 11-30-80	6,325,169.85
Less—Basis of Building After Accelerated Depn. 11-30-80	2,866,995
Gain (Long Term)	3,458,174.85

D. Ex. 5

FRANK LYON CO. — WORTHEN BUILDING

TAX CONSEQUENCE VS. ECONOMIC GAIN

If 1980 Option Is Exercised

Tax Consequence		
Gain on Sale—Taxed as Long Term Capital Gain— Total Gain	3,458,174.85	
Less 50% Nontaxable (Sec. 1202 Deduction)	1,729,087.43	
Taxable Portion of Long Term Capital Gain		1,729,087.42
Rental Loss— Ordinary Deduction (11 yr.)		3,154,219.11
Difference—Net Tax Deduction		(1,425,731.69)
Economic Gain		
Gain on Sale of Building Back to Worthen	3,458,174.85	
Loss on Rental Operation	3,154,819.11	
Economic Gaain		303,355.74

D. Ex. 6

FRANK LYON CO. — WORTHEN BUILDING

TAX BENEFIT—IF OPTION EXERCISED NOV. 30, 1980

Taking 1969 Tax Reform Act Into Account

Cash position after 11 yr.:

Direct:				
Gain on sale			3,458,174.85	
Loss on rents			3,154,819.11	303,355.74
Tax benefit:				
Sec. 1250				
SL dep'n				
2,444,033.32	15 yr	162,935.55		
1,365,783.30	40 yr	34,144.58		
3,378,516.63	30 yr	112,617.22		
Dep'n per yr		309,697.35		
× 11 yr		3,406,670.85		
Accl. dep'n claimed		4,321,339		
Excess dep'n—				
Ordinary income		914,668.15		
Rent losses	@ 48%	3,154,819.11	1,514,313.17	
Sec. 1250 gain		(914,668.15)	(439,040.71)	
Gain on sale		3,458,174.85		
Less Sec. 1250 gain		914,668.15		
Net long-term cap. gn. @ 30%		(2,543,506.70)	(763,052.01)	
Net FIT benefit				312,220.45
Total cash benefit (cash flow)				615,576.19

D. Ex. 7

FRANK LYON COMPANY
LOAN FROM NEW YORK LIFE
(Schedule 12/16/69)

SCHEDULE OF DIRECT REDUCTION LOAN

Rate %	Payment $	Loan $
6.750	153,289.32	7140,000.00
Term: Years	Months	Periods

Prepared by Financial Publishing Company, Boston

Payment Number	Net Interest	Principal Payment	Balance of Loan
1	120,487.50	25,093.53	7114,906.47
2	120,064.05	25,516.98	7089,389.49
3	119,633.45	25,947.58	7063,441.91
4	119,195.58	26,385.45	7037,056.46
5	118,750.33	26,830.70	7010,225.76
6	118,297.56	27,283.47	6982,942.29
7	117,837.15	27,743.88	6955,198.41
8	117,368.97	28,212.06	6926,986.35
9	116,892.89	28,688.14	6898,298.21
10	116,408.78	29,172.25	6869,125.96
11	115,916.50	29,664.53	6839,461.43
12	115,415.91	30,165.12	6809,296.31
13	114,906.88	30,674.15	6778,622.16
14	114,389.25	31,191.78	6747,430.38
15	113,862.89	31,718.14	6715,712.24
16	113,327.64	32,253.39	6683,458.85
17	112,783.37	32,797.66	6650,661.19
18	112,229.91	33,351.12	6617,310.07
19	111,667.11	33,913.92	6583,396.15
20	111,094.81	34,486.22	6548,909.93
21	110,512.86	35,068.17	6513,841.76
22	109,921.08	35,659.95	6478,181.81

Payment Number	Net Interest	Principal Payment	Balance of Loan
23	109,319.32	36,261.71	6441,920.10
24	108,707.40	36,873.63	6405,046.47
25	108,085.16	37,495.87	6367,550.60
26	107,452.42	38,128.61	6329,421.99
27	106,809.00	38,772.03	6290,649.96
28	106,154.72	39,426.31	6251,223.65
29	105,489.40	40,091.63	6211,132.02
30	104,812.85	40,768.18	6170,363.84
31	104,124.89	41,456.14	6128,907.70
32	103,425.32	42,155.71	6086,751.99
33	102,713.94	42,867.09	6043,884.90
34	101,990.56	43,590.47	6000,294.43
35	101,254.97	44,326.06	5955,968.37
36	100,506.97	45,074.06	5910,894.31
37	99,746.34	45,834.69	5865,059.62
38	98,972.88	46,608.15	5818,451.47
39	98,186.37	47,394.66	5771,056.81
40	97,386.58	48,194.45	5722,862.36
41	96,573.30	49,007.73	5673,854.63
42	95,746.30	49,834.73	5624,019.90
43	94,905.34	50,675.69	5573,344.21
44	94,050.18	51,530.85	5521,813.36
45*	93,180.60	60,108.72	5461,704.64
46	92,166.27	61,123.05	5400,581.59
47	91,134.81	62,154.51	5338,427.08
48	90,085.96	63,203.36	5275,223.72
49	89,019.40	64,269.92	5210,953.80
50	87,934.85	65,354.47	5145,599.33
51	86,831.99	66,457.33	5079,142.00
52	85,710.52	67,578.80	5011,563.20
53	84,570.13	68,719.19	4942,844.01
54	83,410.49	69,878.83	4872,965.18
55	82,231.29	71,058.03	4801,907.15
56	81,032.18	72,257.14	4729,650.01
57	79,812.84	73,476.48	4656,173.53

Payment Number	Net Interest	Principal Payment	Balance of Loan
58	78,572.93	74,716.39	4581,457.14
59	77,312.09	75,977.23	4505,479.91
60	76,029.97	77,259.35	4428,220.56
61	74,726.22	78,563.10	4349,657.46
62	73,400.47	79,888.85	4269,768.61
63	72,052.35	81,236.97	4188,531.64
64	70,681.47	82,607.85	4105,923.79
65	69,287.46	84,001.86	4021,921.93
66	67,,869.93	85,419.39	3936,502.54
67	66,428.48	86,860.84	3849,641.70
68	64,962.70	88,326.62	3761,315.08
69	63,472.19	89,817.13	3671,497.95
70	61,956.53	91,332.79	3580,165.16
71	60,415.29	92,874.03	3487,291.13
72	58,848 04	94,441.28	3392,849.85
73	57,254.34	96,034.98	3296,814.87
74	55,633.75	97,655.57	3199,159.30
75	53,985.81	99,303.51	3099,855.79
76	52,310.07	100,979.25	2998,876.54
77	50,606.04	102,683.28	2896,193.26
78	48,873.26	104,416.06	2791,777.20
79	47,111.24	106,178.08	2685,599.12
80	45,319.49	107,969.83	2577,629.29
81	43,497.49	109,791.83	2467,837.46
82	41,644.76	111,644.56	2356,192.90
83	39,760.76	113,528.56	2242,664.34
84	37,844.96	115,444.36	2127,219.98
85	35,896.84	117,392.48	2009,827.50
86	33,915.84	119,373.46	1890,454.02
87	31,901.41	121,387.91	1769,066.11
88	29,852.99	123,436.33	1645,629.78
89	27,770.00	125,519.32	1520,110.46
90	25,651.86	127,637.46	1392,473.00
91	23,497.98	129,791.34	1262,681.66

Payment Number	Net Interest	Principal Payment	Balance of Loan
92	21,307.75	131,981.57	1130,700.09
93	19,080.56	134,208.76	996,491.33
94	16,815.79	136,473.53	860,017.80
95	14,512.80	138,776.52	721,241.28
96	12,170.95	141,118.37	580,122.91
97	9,789.57	143,499.75	436,623.16
98	7,368.02	145,921.30	290,701.86
99	4,905.59	148,383.73	142,318.13
100	2,401.62	142,318.13	144,719.75

D. Ex. 11

WORTHEN BANK AND TRUST COMPANY
Little Rock, Arkansas 72203

November 28, 1969

New York Life Insurance Company
51 Madison Avenue
New York, New York 10010
Attention: Vice President of Real Estate &
Mortgage Loans

Gentlemen:

This to certify to New York Life Insurance Company that as of October 31, 1969, the records of Worthen Bank and Trust Company show that it has paid in connection with the total cost of the Mortgaged Property (as defined in Paragraph 2(E) of the Consent and Agreement dated May 1, 1968, between Worthen Bank and Trust Company and New York Life Insurance Company) as follows:

Payment to Matson Bellows Co.

General Conditions	531,325
Excavation	42,271
Foundation Drilling	191,116
Concrete, Forms & Reinforcing	1,419,167
Pans	—0—
Precast Concrete	—0—
Masonry & Brick Pavers	193,000
Steel Girders	3,011
Miscellaneous Metal	41,233
Hollow Metal	10,032
Millwork & Rough Carpentry	88,803
Lath & Plaster	192,922
Drywall	56,520
Painting	46,802
Sandblasting	98,171

Ceramic Tile	58,250	
Mechanical	627,357	
Electrical	490,100	
Elevators	481,500	
Acoustical Ceiling	30,963	
Glass & Glazing	275,000	
Roofing & Sheet Metal	56,537	
Waterproofing—Basement	7,183	
Waterproofing & Caulking	22,500	
Elastrometric Waterproofing	14,210	
Light Weight Concrete	846	
Rolling Steel Doors	3,300	
Polyurthane Insulation	11,368	
Garage Parking Equipment	—0—	
Rubbish Chute	1,569	
Resilient Flooring	2,570	
Toilet Partitions	2,681	
Toilet Accessories	48	
Finish Hardware	—0—	
Motorized Drape Track & Doors	2,690	
Mail Chute	8,800	
Folding Partitions	—0—	
Contractors Fees	205,200	
		5,217,045.00
Architect Fees		398,515.43
Construction Consulting Fees		61,592.78
Interior Design Consulting Fees		187,492.72
Other Consulting and Engineering Fees		57,020.49
Materials-Concrete, Forms Lumber, Steel		
Concrete, Forms & Reinforcing	961,522	
Precast Concrete	380,440	
		1,341,962.00

Equipment Rental		
Pans	181,360	
Miscellaneous, Others	34,323	
		215,683.00
Other Material, Supplies, etc.		
General Condition	360,728	
Excavation	15,967	
Foundation Drilling	164	
Masonry & Brick Pavers	54,923	
Steel Girders	36,184	
Miscellaneous Metal	100,227	
Millwork & Rough Carpentry	246,001	
Hollow Metal	21,922	
Lath & Plaster	52,808	
Drywall	19,838	
Painting	15,740	
Sandblasting	46,901	
Ceramic Tile	28,185	
Mechanical	666,031	
Electrical	327,994	
Elevators	127,778	
Acoustical Ceiling	67,385	
Roofing & Sheet Metal	1,332	
Light Weight Concrete	653	
Polyurthane Insulation	16,286	
Garage Parking Equipment	26,979	
Rubbish Chute	4,000	
Resilient Flooring	10,050	
Toilet Accessories	9,458	
Finish Hardware	29,439	
Motorized Drape Track & Doors	5,950	
Folding Partitions	5,975	
		2,298,898.00
Legal and Accounting Fees		53,743.05

Interim Interest on Construction Funds Borrowed	399,848.54
Land	1,435,299.95
	11,667,100.96

By /s/ FRANK T. MCGEHEE
Frank T. McGehee
Assistant Vice President

(Subscription Omitted in Printing)

D. Ex. 12

COTHAM, WYMAN & HOWLAND
Certified Public Accountants
PYRAMID LIFE BUILDING
LITTLE ROCK, ARKANSAS
72201

New York Life Insurane Company
Attention: Vice President in Charge of
Real Estate and Mortgage Loans
51 Madison Avenue
New York, New York 10010

Re: Worthen Building and Garage

Pursuant to Paragraph 2(E) of the Consent and Agreement dated May 1, 1968 between Worthen Bank & Trust Company and New York Life Insurance Company, this is to certify that the Total Cost of the Mortgaged Property as defined below is at least $9,500,000.

The Total Cost of the Mortgaged Property is defined as: (1) the total cost of the Worthen Building; (2) the aggregate of costs reasonably incurred and paid by Worthen Bank & Trust Company in connection with the acquisition of the land underlying the Worthen Building and Garage and charged and properly chargeable to the property accounts of the Bank in accordance with generally accepted accounting principles; (3) the aggregate of the costs reasonably and necessarily incurred and paid by the Bank in connection with the construction of the garage facility and charged and properly chargeable to the property account of the Bank in accordance with generally accepted accounting principles.

A detailed breakdown of expenditures for the period May 13, 1966 to November 18, 1969 is shown below:

Payments to Matson-Bellows Construction Company	$ 4,786,371.00
Architect Fees	398,515.43
Construction Consultant Fees	61,592.78
Interior Design Consulting Fees	187,492.72
Other Consulting and Engineering Fees	57,020.49
Materials—Concrete, Form Lumber, Steel	1,291,534.25
Equipment Rental	215,683.78
Other Materials, Supplies, etc.	2,190,674.17
Legal and Accounting Fees	53,743.05
Interim Interest on Construction Funds Borrowed	399,848.54
Land	1,435,299.95
	$ 11,077,776.16

Dated this 25th day of November, 1969.

COTHAM, WYMAN & HOWLAND

By ——————————, C.P.A.
Members American Institute of
Certified Public Accountants

(Subscription Omitted in Printing)

D. Ex. 13

September 2, 1966

Mr. Harry E. Meek, Attorney
Rose, Meek, House, Barron, Nash & Williamson
720 West Third Street
Little Rock, Arkansas 72201

Dear Mr. Harry:

In connection with the proposed financing of our new bank structure, we would like to explore the possibility of organizing a subsidiary corporation to own the building and in turn, lease the building to Worthen Bank. The subsidiary corporation would negotiate a mortgage loan based on ownership of the building site and the long term lease from Worthen Bank.

To set up the subsidiary corporation the bank could either purchase the building site and deed it to the subsidiary corporation in return for one hundred percent holdings of the subsidiary corporate capital stock. Another alternative would be for Worthen Bank to spin off the real property to the XYZ Corporation.

We are trying to determine the best procedure for the financing and of course, the answers to the above will enable us to take depreciation of the improvements and real estate taxes into consideration in arriving at the best plan to follow.

If you have any other suggestions as to the organization of a corporation to hold title, please let me have your thinking. Of course, as an alternative to the above methods the bank could sell the property to a non-affiliated corporation, and lease it back from them. This might be the most feasible plan but could be more expensive.

An opinion from you relative to the above will be appreciated.

Sincerely,

RICHARD F. GATES
Vice President

D. Ex. 14

ROSE, MEEK, HOUSE, BARRON, NASH & WILLIAMSON
ATTORNEYS AT LAW
720 WEST THIRD STREET
LITTLE ROCK, ARKANSAS 72201

October 13, 1966

Worthen Bank & Trust Company
401 Main Street
Little Rock, Arkansas
Attention: Mr. Richard Gates

Dear Mr. Gates:

Please refer to your letter of September 22, 1966.

I understand the bank, in connection with the construction of its new banking house, is considering the following procedure:

1. The bank will create a wholly-owned subsidiary having a rather nominal capitalization.

2. The bank will convey the building site to the subsidiary at a price equal to the cost incurred by the bank in purchasing the building site. In exchange for this conveyance all shares of the subsidiary would be issued to the bank.

3. The subsidiary would obtain a mortgage loan from some institutional lender in an amount equal to the land cost and the cost of constructing the building. If a 100% loan could not be procured, the bank would have to absorb some part of the land cost.

4. The subsidiary will cause the building to be constructed.

5. Subsidiary will then lease the land to the bank for a leasehold term at a rental which will be determined by

the terms and debt service requirements of the subsidiary's mortgege.

6. The subsidiary will mortgage to the institutional lender the land and building and also assign to the lender its rights as lessor under the lease contract; this assignment being given as additional collateral for the lender.

7. The lease will have to be a net lease, with the bank assuming full responsibility for maintenance, taxes, insurance, etc. The lease will contain a provision giving the bank an option to purchase the property, at a nominal price, when all rentals under the lease are paid.

I will discuss different aspects of this matter.

I

INCOME TAX CONSEQUENCES

The Treasury Department would take the position, so far as tax consequences are concerned, that the bank is obtaining a loan on the building, and would disregard the fact that the title is vested in the subsidiary and that the loan is being obtained by the subsidiary. The Treasury Department would treat the lease contract (held by the lender as assignee of the subsidiary) as being in reality a security agreement. Therefore, the Treasury Department would do the following in respect to income tax liabilities:

(a) The bank could not deduct the rentals paid by it to its subsidiary as a business expense for tax purposes.

(b) The bank could, however, claim a deduction for the portion of each rental payment allocable to the loan interest. Of course this deduction would be diminished as the loan was retired.

(c) The bank could claim depreciation.

(d) No capital gain or loss would be recognized in connection with the transfer from the bank to its wholly-owned

subsidiary. This is due to the fact that from a mathematical standpoint there would probably be no gain or loss; and also to the fact that the transaction would be a non-taxable corporate adjustment.

(e) The bank and the subsidiary could file separate returns; and the subsidiary's return would show the rent received as non-taxable income. A consolidated return could be filed if your accountants felt that this was desirable.

A bank in northeastern Arkansas effected a sale and leaseback transaction of this character early this year; and I enclose a copy of the opinion of the local Treasury Department office in respect to this transaction. Worthen should obtain such a preliminary opinion when its plans are crystalized.

I also enclose a Xerox copy of an article on sale and leaseback of bank and premises written by Lewis Greenblatt—Mr. Greenblatt being a New York attorney. I have two additional law review articles on the subject but I will not burden you with them.

In reaching the conclusions above set out, I consulted the following authorities:

Helvering vs. Lazarus & Company, 308 U.S. 252, decided in 1939.

Leeds & Lippencott Company vs. U.S., 276 Fed. 2d 927, decided in 1960.

Paul W. Frenzel and Paula S. Frenzel vs. Commissioner, 22 T.C.M., page 1391, decision 26,347, handed down in 1963.

Shaffer Terminals, Inc. vs. Commissioner, 16 T.C. 356, decided in 1951.

Frito-Lay Co. vs. U.S., 209 Fed. Supp. 886 (1962).

Century Electric Co. vs. Commissioner of Internal Revenue, 192 Fed. 2d 155 (1951).

II

AUTHORITY OF BANK TO CREATE A BANK PREMISES SUBSIDIARY

Section 113 of our banking act of 1913 spells out in very primitive style the corporate powers of a state bank. It certainly contains no express authorizations for a bank to set up a subsidiary See Section 67-501 of our Code.

However, Section 67-547, enacted in 1955, gives a bank very broad authority to acquire land as a location for its banking house or as a parking lot established for the convenience of its customers; and in my opinion a state bank can effect this acquisition of land either in its own name of its wholly-owned subsidiary.

Where a bank acquires bank premises through a wholly-owned subsidiary, the legality of the tranaction turns on the question of whether the bank violates any banking statute in acquiring all of the capital stock of its subsidiary. A bank, of course, is not permitted to engage generally in the purchase of the shares of business corporations. This restriction is to prohibit investments which might be speculative and might impair the position of the depositors.

But the purchase of the shares of a wholly-owned subsidiary under the circumstances contemplated by Worthen would not amount to an "investment", within the meaning of the banking laws. Such purchase of shares by Worthen would amount merely to a mechanical step utilized by it in acquiring new banking premises in a manner that would ot impair the bank's cash position or show large bills payable liabilities on its books.

In my opinion, the acquisition of the shares of Worthen's subsidiary would offend banking restrictions only if the transaction be regarded as an "investment" within the meaning of the banking laws. But such a transaction will result in no capital gain or loss; it will merely a procedural step taken in financing, in the most favorable manner, the acquisition of the new bank premises; and the purchase of the shares of its wholly-owned subsidiary will not be an unauthorized investment.

The only state court decision dealing with this subject matter which I have been able to find is Fourth National Bank vs. Shahlman, 178 S.W. (Tenn.) Page 942. Here the court approved the purchase by a bank of preferred stock in a building corporation to facilitate the acquisition by the bank of a long term lease from the building corporation of space for banking house premises. The court remarked that the rules restricting a bank's right to purchase stock in other corporations had no application to a situation where the purchase was made as a step reasonably justified in facilitating the acquisition of new banking premises. This suit involved a national bank, but the same principles would apply to a state bank situation.

The Federal Banking Act of 1933, as amended, tacitly authorizes a state member bank to utilize a subsidiary in acquiring its banking premises. This section (12 U.S.C.A. 371d) reads:

> "No national bank, without the approval of the Comptroller of the Currency, and no State member bank, without the approval of the Board of Governors of the Federal Reserve System, shall (1) invest in bank premises, or in the stocks, bonds, debentures, or other such obligations of any corporation holding the premises of such bank or (2) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans, *together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in Section 221a of this title,* will exceed the amount of the capital stock of such bank." (My emphasis.)

See also 12 U.S.C.A. 317c.

In October, 1965 the Arkansas State Bank Commissioner authorized the bank of McCrory to transfer its banking house to a wholly-owned subsidiary in connection with their lease and sale agreement.

III

Right of Bank To Acquire Office Space for Lease to Tenants

It has been held that a national bank may lease or construct a building for banking purposes even though it intends to occupy only a part of the building and to rent out a large part of the building to others. Perth Amboy National Bank vs. Brodsky, 207 Fed. Supp. 785 (1962); Brown vs. Schleier, 118 Fed. 981 (8th Circuit, 1902).

In my opinion the same reasoning which justifies such action on the part of a national bank would be applicable to a state bank.

Before we get too deeply involved in a leaseback arrangement, we should consult Mr. J. G. Williamson and the bank's accountant Ralph Cotham.

Yours truly,

Harry E. Meek

U. S. Treasury Department
INTERNAL REVENUE SERVICE
District Director
Little Rock, Arkansas 72203

December 9, 1965

Mr. John D. Eldridge
Vice President, Bank of McCrory
Haralson-Eldridge Building
Augusta, Arkansas 72006

Dear Mr. Eldridge:

You have inquired about the tax consequences of a proposed transaction which involves the sale, by a Bank of McCrory, of its plant (building and all fixtures) to its wholly owned subsidiary, and simultaneously leasing the plant back for a rental which will, over the full term of the lease, equal the principal and interest payments necessary to liquidate a purchase-money loan to be borrowed by the subsidiary. The loan will equal the purchase price the subsidiary will pay for the plant. Under the terms of the lease, the Bank will have the option of reacquiring the plant for $1.00 at the end of the lease period.

You also said that the Bank will pay all taxes, insurance, and maintenance costs relative to the plant.

Thus, the subsidiary will simply collect the principal and interest payments from the Bank, and pass them on to the mortgage.

As you suggested, the proposed transaction is, in substance, a mere mortgaging of the plant by the Bank. Therefore, the sale and leaseback will not be recognized for Federal income tax purposes. The bank will not be allowed a deduction for lease rental paid to the subsidiary, nor would the subsidiary be deemed to have received taxable rental income. The Bank would, however, be allowed a deduction for interest paid on the mortgage.

This letter represents an opinion and does not constitute an official determination or ruling.

Sincerely,

/s/ Fred W. Johnson
Fred W. Johnson
District Director

Financing Through Sale and Leaseback of Banking Premises

Louis Greenblatt

Mr. Greenblatt is a senior partner of the New York City law firm of Tenzer, Greenblatt, Fallon & Kaplan. He is a director of a number of public corporations and has for many years been a Lecturer for the Practising Law Institute in New York City on real estate and tax matters.

It is the purpose of this article to review several methods of adding to the capital of a bank, as well as to its liquidity, with special emphasis on the use of sale and leaseback transactions to accomplish both of these objectives.

The expansion of our economy, with the concomitant expansion of banking as a whole, poses a number of serious problems for many banks. Particularly affected are those banks that have increased the volume of deposits and loans, but whose capital has not been enlarged in the proportions required to support these increases. Some banks are in a weak reserve position because their working capital ratio to deposits is too low to meet the requirements of the Federal Reserve Bank and local banking authorities. Others are in a weak capital position because the ratio of total capital to total deposits does not meet the necessary ratio requirements of the Federal Reserve Bank and of local State Banking Departments.

All banks are closely watched and checked to make certain that liquidity and capital ratio positions are at all times sufficient to enable them to meet all demands which may reasonably be made on them by demand depositors. In considering a bank's financial condition for both Federal and local Banking Department purposes, all of the bank's assets are separately analyzed for liquidity and availability to meet demand deposit requirements. All assets are rated, and liquid assets are treated as capable to support deposits on a much higher ratio than that applied to fixed assets. For reserve purposes, fixed assets are completely eliminated from consideration. For the purpose of support of total volume of deposits, fixed assets may be treated as having a ratio of one to one whereas liquid assets may have a ratio of as much as twenty to one.

Under the rules of the Federal Reserve Bank it is necessary for a "City" bank to maintain reserves of 16½% of demand deposits, and for so-called "Country Banks" to maintain reserves of 12% of demand deposits. These reserves are frozen either by non-interest bearing deposits with the Federal Reserve Bank or by maintaining actual cash on hand. It thus becomes necessary for bank managers to maintain sufficient working capital resources to comply with these reserve requirements as well as those prescribed by State Banking Laws. As has been pointed out, in calculating the amounts creditable for such reserve purposes, only liquid assets are considered. How to obtain additional working capital to meet these requirements is, therefore, a problem of first magnitude for those in charge of the bank's operations.

Furthermore, in many cases a bank may be growing at a rapid rate and its deposits may be increasing at a rate that makes it desirable to expand its operations or to increase its facilities. This may require a considerable amount of additional investment in fixed assets, which the bank may ill afford to freeze; to do so may change the working capital ratio of the bank. This may require the bank's management to consider the effect of the cost of the expansion or new facility on the entire capital structure. Does the program require that additional capital be raised? If so, how shall it be done?

Bank management thus faced with the need for additional capital and an increase in its *working* capital must then determine the route to be taken to obtain the necessary additional capital for any or all of the foregoing purposes.

Prior to 1930 it was almost the universal policy of banks to increase their capital by rights subscriptions for common stock. During the depression, the sale of bonds and preferred stock was authorized, but principally as a method of financing distress conditions. It was the policy of the Comptroller of the Currency with respect to National Banks, and also the policy of State Banking Departments, to discourage and restrict senior capital financing. This attitude, however, has changed in recent years, and both the Comptroller of Currency and many State Banking Departments, now appear to approve senior capital financing and the issuance of senior debt securities.

A number of avenues to obtain additional capital and liquidity are available, and they may be used singly or in a combination of some or all of them. In summary, they are as follows:

- The issuance of rights to the existing common stockholders to purchase additional common stock;
- The issuance of preferred stock, with or without voting rights, with or without a definite retirement program, and with or without convertibility;
- The issuance of subordinate debenture notes payable over long terms. These also may be with or without conversion rights;

• The sale and leaseback of its banking property.

Bank management is required to carefully analyze the method or combination of methods of raising additional capital funds that are available and to select the method which can be used to the best advantage. In each instance, the route to be taken by a given institution is entirely dependent upon the financial condition and requirements of the individual institution.

Rights

The issuance of rights to the common stockholders is the oldest and most conventional method of obtaining additional capital. However, this sometimes has the disadvantage of causing dilution of the interests of the common stockholders because some of the stockholders may not be in a position to exercise the rights. This method may be particularly undesirable in smaller closely-held banks because management does not want to, or is not able to, invest additional capital funds in the bank and at the same time does not want to give up actual control of the bank. It may also be undesirable because the amount of additional capital that may be needed may be more than may be available through a rights issue. Most banks, large and small, in recent years have been avoiding rights issues because of a desire not to cause dilution of the common stockholders' interests. Especially is this so where funds are available through other means, and the bank could earn more than the cost of the debt service, thus increasing the total earnings of the bank and the net earnings per share for the existing stockholders.

Debentures

In some instances the capital structure of the bank is such that the issuance of debenture notes would be most desirable. This is so in cases where the additional capital desired is not disproportionate to the bank's existing capital, and would not create an imbalanced ratio between capital and debt. Good money management would seem to indicate that the debt should not exceed 30% of the capital. Usually these funds are available at comparatively low cost. Moreover, the cost of interest is tax deductible, and the debentures do not dilute the interests of common stockholders. Bankers Trust Company in New York City recently found it desirable to issue One Hundred Million Dollars of 4.5% subordinate debenture notes, in preference to any other method of obtaining working capital. Crocker-Citizens National Bank in San Francisco recently announced that it is planning a new One Hundred Million Dollar 4.6% subordinate debenture issue. In both cases, the additional money so obtained has the effect, for reserve purposes, of supporting about $600,000,000 of additional deposits and, at the same time increases the bank's lending limit on any individual transaction by an additional $10,000,000.

Preferred Stock

The issuance of preferred stock has the advantage of being attractive to corporate investors, such as insurance companies or other investment institutions that have large amounts of investment funds available. To such a corporate holders, 85% of the dividends received on the preferred stock is tax sheltered by exclusion of this amount from Federal income taxes and only 15% is includible. Thus the net yield is far greater, after taxes, than any yield on a straight debt issue. The issuance of preferred stock has an advantage in that it does not dilute the interests of the common stockholders. The disadvantage to the bank, however, is that the dividends payable on the preferred stock are not deductible as an expense of operations but are paid out of after-tax paid earnings. Recently, the Franklin National Bank on Long Island, New York issued Twenty Million Dollars of 4.6% preferred stock. In addition, it raised approximately Thirty Million Dollars by way of a deben-

ture issue and an additional Sixteen Million Dollars by way of a sale and leaseback transaction. This bank thus used all three methods to raise additional capital *without diluting the common stock* of the bank.

Sale-Leaseback

The use of a sale-leaseback method of obtaining capital has a number of advantages. In most cases a bank has between 15% and 20% of its capital invested in its bank buildings and this investment is treated by the bank on its balance sheet as a fixed asset. Such an asset is valueless for reserve purposes and, as will later be shown, has no value for leverage purposes. By making a sale-leaseback transaction, either with a wholly owned subsidiary or with an independent third party, the fixed asset is immediately converted into a cash liquid asset. In many cases, the value of the property is much greater than the amount at which it is carried on the books. The making of the sale-leaseback at the higher value will thus bring about an increase in the total amount of capital of the bank, in addition to the conversion of a fixed asset into a cash asset. In and of itself, this conversion from a frozen asset to a liquid asset will greate a great deal of leverage for the bank with which to support additional deposits and permit it to increase its lending limits. All of this is accomplished without the creation of a debt liability on its balance sheet (although it will be obligated on the lease), and without diluting the interests of the common stockholders.

We will now proceed to show some of the details of a sale-leaseback transaction, including the cost and tax consequences thereof, and how its use will be of advantage to a bank as a method of increasing its capital liquidity and its earnings.

SALE AND LEASEBACK TRANSACTIONS WITH A WHOLLY OWNED SUBSIDIARY

Throughout the years, banks have had a strong desire to own their principal quarters. There was a reluctance to dispose of their property. By a sale and leaseback with a wholly owned subsidiary, a bank can convert its fixed asset to cash and still retain control of its property.

Let us assume that a bank owns property which has a depreciated book value of $500,000 but a market value which, together with the leaseback, will make it mortgageable for $1,000,000; that the property is sold for $1,000,000 to a wholly owned subsidiary which leases it back to the bank on a long-term lease at a net rental sufficient to support the debt service on a $1,000,000 mortgage loan made to the subsidiary, secured by a lien on the property, and an assignment of the bank lease. Out of the proceeds of the mortgage the subsidiary pays the bank the $1,000,000 purchase price. This amount is received by the bank in place of the $500,000 book value of the fixed asset. The transaction would be consummated as follows:

- The bank organizes a wholly owned subsidiary with a nominal capital. The subsidiary is authorized by its charter to own and hold real estate and equipment, and to buy, sell, lease and mortgage same, etc.

- The bank conveys its property to the subsidiary at a price of $1,000,000 and simultaneously executes a net lease with the subsidiary. The term of the lease and the amount of rent to be paid will be determined by the term and the debt service requirements of the mortgage. This will be referred to in more detail later.

- The subsidiary then executes the mortgage on the property to the lending institution, and at the same time it assigns the lease with the bank to the lender as additional collateral security.

• The subsidiary then uses the proceeds of the mortgage to pay the bank the $1,000,000 purchase price.

When properly handled, the following are accomplished:

Bank Balance Sheet

The bank's statement will show an increase in cash by $1,000,000. (This is rounded out and does not consider mortgage costs, legal charges or title closing costs incurred in consummating the transaction.) Fixed assets of $500,000 are eliminated. The *actual* capital of the bank is increased by $500,000. The lease liability does not appear as a balance sheet obligation, although a footnote relating thereto may be inserted by the accountants. Thus we have increased the *working* capital of the bank by $1,000,000, and the *actual* capital by $500,000.

Tax Consequences

All of the foregoing are without any tax consequences resulting from the transaction. The Internal Revenue Service has repeatedly held that it will disregard the *form* of the transaction and will look only to the *substance*. It will treat the entire transaction as a mortgage by the bank and will disregard the form used to accomplish this result. Therefore, no capital gain or loss will be recognized. After the transaction is completed the rental paid would be treated for tax purposes in exactly the same manner as if no sale-leaseback transaction had been made. Depreciation would still be taken on the same basis as before the sale and leaseback; interest only which is paid on the mortgage would be allowed as an expense, but not the amortization payments. Where a sale-leaseback transaction is made with a wholly owned subsidiary, the bank and the subsidiary each file separate returns. It has been the practice of banks to ask for and get a prior ruling from the Internal Revenue Service approving the transaction as non-taxable, and a copy of this ruling is attached to the returns of both the

bank and the subsidiary. The subsidiary files a return showing the rent received as non-taxable, and it shows no taxable income, and also attaches a copy of the Internal Revenue Service ruling, or a statement of the transaction. It is also acceptable accounting practice to file a consolidated return for the bank and the subsidiary. The form to be adopted is determined by the bank's accountants and may be influenced by other considerations, such as other wholly or partly owned corporations, etc.

Lease Provisions

A few of the clauses to be inserted in the lease are:

• The lease should be for an initial term of years to coincide with the mortgage terms available. Usually the mortgage will be self-liquidating over a period of years with constant payments of a fixed sum applicable first to the payment of interest at the agreed upon rate and the remainder to reduction of principal. The term of the lease should be for at least as long as it takes to liquidate the mortgage debt.

• The lease should give the bank one or more options to extend the term at a nominal rent after the expiration of the initial term. It may conceivably be desirable for the bank not to want the fixed asset to reappear on its statement.

• The lease should give the bank lessee an option to repurchase the property at any time, subject to the obligations under the mortgage, or at the end of the lease term for a nominal consideration. This may prove to be a cheaper way to reacquire ownership of the property by the bank than to merge the subsidiary into the parent.

• The mortgage to be executed by the subsidiary should have some prepayment privilege before maturity of the mortgage, either with or without penalty, depending on the terms and conditions agreed upon with the lender at the

time that the mortgage is obtained. The lease should permit the bank to cancel the lease at any time, provided it makes provision for the payment or assumption of payment of the unpaid balance due on the mortgage. At the time of cancellation of the lease the bank may also exercise clause.

• The lease should provide that in case of substantial damage by fire which requires rebuilding, all proceeds should be applied to reconstruction of the property to its original condition unless the bank elects that it shall be applied in reduction of the mortgage. In the latter event the bank should be privileged to pay off the remaining balance due on the mortgage and have it satisfied. This gives the bank the choice of repairing the damage and rebuilding the existing structure, or to rebuild an entirely new, larger, and more valuable structure and make a new sale-leaseback transaction for the new structure for a much larger amount. This may prove to be advantageous where valuable land was not theretofore used for its full economic value.

• The lease should have a condemnation clause that gives recognition to the interest of the bank as lessee for the unexpired term and the options. Hence the lease should provide that in the event of condemnation, all of the award in excess of the unpaid balance due on the mortgage should be paid to the bank.

• The lease should protect the bank against liability for damage by fire even if caused by the bank's negligence. Hence, the lease should require that all fire insurance policies shall exclude any right of subrogation against the bank or its subsidiary for any fire damage, regardless of the cause of such damage, even including the negligence of the bank or its employees.

• The lease should give the bank the right to assign the lease, or sublet the premises, but without release of the bank's obligation as lessee.

• The lease should be a "net lease," that is to say, the bank should be required to pay all taxes on the property, to maintain the latter in good repair, including compliance with all laws and ordinances affecting the property, and to insure the property against the risk of fire and all other insurable risks such as those comprehended within "extended coverage" and also war risk insurance when the latter is available. The lease, moreover, should provide that there is no abatement or diminution in rent because of any damage or destruction to the premises by any cause whatsoever.

• The lease should permit the bank to make alterations and renovations and under certain conditions acceptable to the mortgagee so as not to affect its security, to demolish and rebuild.

• The lease should be subordinate to the mortgage but the subordination clause should provide that so long as the bank pays its rent and otherwise complies with its obligations under the lease, it will not be disturbed in its possession of the demised premises.

SALE AND LEASEBACK TRANSACTIONS WITH THIRD PARTIES IN ARMS-LENGTH TRANSACTIONS

It is not often that a bank will desire to make a completely arms-length sale and leaseback of its property with a third party, but there may be circumstances under which this kind of transaction may be preferred. This may be a desirable method where a bank has fully depreciated its property and it is carried on its books for the land value only. It may be profitable for the bank to realize the full value of the property in cash, and pay a capital gains tax at low rates. Thereafter, it will take full deduction for all of the rent paid. Another instance in which a bank may prefer an arms-length transaction is where a bank desires a new building. It may be cheaper for it to build the new structure in the first instance, and then make a sale-lease-

back transaction which will recoup its investment. In all likelihood the rent to be paid will be lower than if the building were built by a third party and then leased to the bank.

Let us assume that a bank has a fully depreciated property carried on its books for $100,000, that being its land value. Let us also assume that it can sell the property for $1,000,000 and lease it back at a net rent of $70,000 per year for a term of 25 years, with one 20-year renewal option at $35,000 per annum and three additional renewal options for 20 years each at $17,500 per annum. Under the current income tax rates, the bank would pay about 25% of $900,000 as a capital gains tax, or about $225,000, and it would retain $775,000 as a net cash asset in place of $100,000 of fixed assets. In this manner, it would add $775,000 of working or liquid capital, and $675,000 to the total capital of the bank, without creating any liability on its statement. All of this would be cash or liquid capital with its full leverage and asset-ratio advantages. Thus there has been created $775,000 of additional working capital with which to produce income. Before the transaction, the bank had no depreciation deduction, but after the transaction, the bank will deduct the full $70,000 rent paid as an expense. The net cost after taxes would then be about $35,000 per year. It can be readily seen and we point out below some of the details that in almost all cases a bank should be able to earn more on the additional capital created than the cost of this debt service.

In an arms-length transaction the lease will be more in line with the usual long-term net lease, but should particularly include:

• A non-disturbance agreement applicable to any owner or mortgagee which would provide in substance that so long as the bank pays the rent and otherwise complies with its obligations under the lease, the bank will not be disturbed in its possession of the premises.

• The lease should include protection to the bank for its interest in the lease in the event of condemnation. A full schedule of amounts to be allocable to landlord and tenant should be attached giving the owner his undepreciated value of the property and provide for the payment to the bank of the value of its leasehold. The foregoing is, of course, apart from the bank's right to assert its separate claim for its trade fixtures and equipment that are condemned.

• The lease may include a purchase option. However, extreme care must be used to make sure that the provisions of the option and the terms and price of repurchase do not make the transaction an illusory one. If there is such an illusion, the consequence will be that for Federal tax purposes the transaction will be treated as a mortgage and not a sale with the resulting loss of rent deductions—at least to the extent that these exceed a reasonable interest rate.

THE COST OF SALE-LEASEBACK TRANSACTION

The cost of a sale-leaseback transaction—assuming it to be with a wholly owned subsidiary—is directly related to the value of the property and the strength of the bank as lessee. In all cases the bank is required to pay all maintenance costs, insurance, taxes and other charges. We will only consider the costs of the financing of the sale-leaseback transaction. The Chase Manhattan Bank in New York City was able to procure a $60,000,000 mortgage at 4% interest on its headquarters building at Chase Manhattan Plaza. Franklin National Bank on Long Island borrowed about $16,000,000 at an interest of 4.7%. Smaller banks will find that an interest cost of 4.75% to 5.5% is about the going rate. Of course, there must be added the amount of amortization payments on the debt and these payments will be determined by the length of term of the self-liquidating mortgage. Usually, the payments are constant level payments and are payable quarterly. The cost of procuring

the financing, such as underwriting fees, brokerage, legal fees, title insurance and like charges are usually charged off, at least for tax purposes, in equal installments over the term of the mortgage. The amount of such costs vary, but should not exceed a total of between 2% and 3% of the amount obtained.

Where an arms-length transaction is made, it is generally at a rental which will reimburse the owner for his full investment and also give him a rate of return about equal to that of a mortgage. However, the income under the lease continues during the entire term of the leaseback and any renewals and at the end of the lease belongs to the purchaser. In recent days it has been the practice of lending institutions to fix the rental at 50% of the original rent for the first renewal term of years, and 25% of the original rent thereafter.

In comparison with the above, interest on subordinate debentures vary from 4½% (as paid by Bankers Trust Company in New York City) up to 5½% paid by smaller banks. This also is the range of rates for preferred stock, but at about ¼ of 1% higher because stock is a capital investment rather than a debt.

EFFECT ON FEDERAL DEPOSIT INSURANCE CORPORATION PREMIUMS

The Federal Deposit Insurance Corporation charges its member banks a premium based on the total amount of deposits. It does not segregate accounts which have more or less than $10,000 balances, although its obligation on any one account is limited to $10,000. The premium cost is 1/12 of 1% of average deposits based on calls made quarterly. Usually the premium cost is reduced by a credit of between 55% and 60% of the fixed rate, based on experience. Thus the ability of a bank to maintain and support larger amounts of deposits because of its increased capital may

cause an increase in its premium cost, but the amount of such additional premium cost is so nominal as to be of no real concern to any bank when considering its capital needs.

APPLICABILITY TO NEW YORK CITY BANKS

In 1963 the City of New York adopted an Occupancy Tax Law which has recently been upheld by the Court of Appeals of the State of New York—the highest court in the State. Under this enactment an annual occupancy tax is levied on tenants at the rate of 5% of the annual rental when the latter is in excess of $2,500 per annum, but no tax is payable where premises are owner-occupied. As a result of this tax it appears that a bank is required to pay the Occupancy Tax on the rent paid to the subsidiary, but no Occupancy Tax is required if the bank remains the owner. Although for Federal income tax purposes the form of the transaction is disregarded and the substance only is controlling, it is believed that for the purpose of liability for the Occupancy Tax the form of the transaction is controlling. As a result of this tax, New York City banks have had some second thoughts on sale-leaseback transactions. Recently the Chase Manhattan Bank entered into such a transaction with a wholly owned subsidiary, and executed a long-term lease at a very large annual rent. This would have cost the bank more than $500,000 annually for the Occupancy Tax. Before the tax became effective it reversed the transaction, and reacquired the property, so that it became an owner-occupant. To do so, it made arrangements with the New York State Teachers Retirement Fund which held a $60,000,000 mortgage to accept repayment in advance and release the mortgage as a lien on the property. It then cancelled the lease agreement made with its wholly owned subsidiary. This was also done by Manufacturers Hanover Trust Company when it exercised its option to purchase its banking headquarters on Park Avenue in New

York City from Uris Building Corporation. The possibility of such an occupancy tax in places other than New York City should always be considered when embarking on a sale and leaseback, and adequate precaution taken to permit reversal of the transaction if the local jurisdiction should follow New York City's lead and enact a similar tax.

CAPITAL ADEQUACY AND ASSET-RATIO AND ITS RELATION TO SALE AND LEASEBACK

It might be well to dwell briefly on the over-all problems of capital adequacy, asset-ratios and leverage of bank assets and capital, and the impact that a sale and leaseback has on these. Bank management is always on the alert to make the utmost use of its available assets, but the bank must always be sure that this is done without violating the Federal Reserve Bank requirements, and without inviting criticism from the State Banking Department.

It must be emphasized that a bank must at all times be so conducted that its capital structure and asset-ratio is adequate for the operation of its business. In determining capital adequacy, the Federal Reserve Bank and local Banking Departments make detailed studies of each bank's portfolio, and assign a value to each asset. They also apply a "risk-assets" formula to each asset to obtain proper ratios. The formula varies in many states and between State and National Banks and between different parts of the country. As an illustration of the application of the risk-asset formula ratings to asset categories, a 100% riskless rating is given to U.S. Government securities, 75% to AAA securities, etc.

In almost all cases, the entire fixed asset investment of a bank is deducted from the capital structure, or reduced to utility value, before computing the asset or capital ratio. In the case of a small bank, the fact that it has a substantial investment in fixed assets may have the effect of

reducing its capital adequacy and asset ratio to a point where it is seriously hampered in its growth and its ability to properly serve its customers. By unfreezing its fixed assets via a sale-leaseback transaction, and converting such fixed asset into cash, a bank will be able, at least to the extent of such conversion, to improve its working capital and asset-ratio picture. This will enable it to (1) have cash assets which can be used to provide increased reserve requirements; (2) this in turn will support six to eight times the amount in added demand deposits; (3) this in turn adds that much more to the amount which the bank can lend to its customers. The bank generally requires borrowers to keep about 20% of the amount of loans on deposit as average balances, which provides still further leverage for reserve and lending purposes.

All of this is accomplished without creating any debt liability on the balance sheet and without diluting the interest of its stockholders.

SALE AND LEASEBACK AND EFFECT ON EARNINGS

A bank's ability to utilize its funds fully and continuously determines its ability to earn profits. We have shown how the increase in working capital can support between six and eight times the amount of that capital in additional demand deposits. Such increase can support even more than this amount in time deposits. Let us then analyze what this means to a bank's gross earnings, net earnings and earnings per share.

Let us assume that a sale and leaseback transaction results in the conversion of a fixed asset to a cash asset in the sum of $1,000,000 and that the debt service for this is 5% per annum. We then can accomplish the following:

△ The cash received will support at least $6,000,000 of additional demand deposits. This figure will be more in a "Country" bank and more for time deposits.

△ These additional deposits will enable the bank to make additional loans to its depositors of about $6,000,000 at between 5½% and 6% per annum. A considerable portion of the loan funds will generally remain on deposit with the bank.

△ If the sale and leaseback transaction is made at a figure greater than the book value, the increase in capital thus created will enable the bank to correspondingly increase its lending limit to any one borrower.

The earnings from the additional $6,000,000 of loans can generate up to $300,000 of pre-tax income. From this $300,000 income we deduct $50,000 as the debt service cost of the sale-leaseback transaction, leaving a possible $250,000 of pre-tax income. Let us reduce this to $200,000 and assume that the after tax income is $100,000. An analysis of bank earnings shows that a bank will on an average earn about 10% on capital after taxes. If we apply this average to the increased capital generated, we have after tax earnings of $100,000. Let us reduce this further to $75,000, which might be considered conservative particularly when we consider that the added volume can be handled with only a slight increase in operating expenses. There may be a slight additional advantage in that some taxes can be saved by a somewhat larger sum to be charged to reserve for bad debts account.

Generally, the stock of a well managed bank will sell at about 20 times earnings. Therefore, the result of the sale-leaseback transaction can create an additional value of $1,500,000 to the common stock outstanding.

There is still a further advantage. If the bank's earnings position is thus improved, and if the bank can utilize more capital funds to support its growth or expansion program, its added strength from the sale-leaseback transaction may enable it to procure additional senior debt

financing, at lesser cost and in greater amounts, and all without diluting the interests of the common stockholders.

CONCLUSION

What is set out above gives a review of a new approach in considering the capital structure of the bank and shows how capital requirements can be increased by the method of sale and leaseback. Within the space allotted, we hope that enough has been shown to demonstrate the feasibility of this method and how a bank may profitably consider its employment.

D. Ex. 15

ROSE, MEEK, HOUSE, BARRON, NASH & WILLIAMSON
ATTORNEYS AT LAW
720 WEST THIRD STREET
LITTLE ROCK, ARKANSAS 72201

September 8, 1967

Worthen Bank and Trust Company
401 Main Street
Little Rock, Arkansas

Re: Lease

Gentlemen:

You have requested our opinion concerning the ramifications of a long term lease with an institutional investor for the building to be constructed. The following is my understanding of the proposed lease arrangement:

It is proposed that the land will be purchased from the Urban Renewal Administration at a cost of approximately $1,450,000.00.A multi-story building (hereinafter referred to as "tower") and a multi-story parking deck will be constructed on the sight.

The institutional investor will purchase the land under the tower and construct the tower. Worthen Bank and Trust Company will purchase the land under the parking deck and construct the parking deck.

The cost of the land under the tower will be $965,000.00 and the cost of constructing the tower will be approximately $6,500,000.00.

The institutional investor proposes to enter into a "net" lease with Worthen Bank with respect to the ground under the tower and the tower. The initial term of the lease will be thirty years, with renewal options up to a total of seventy-five years. The annual rental during the initial

term of the lease will be approximately $585,000.00. Worthen Bank will be given an option to purchase the building at the end of the fifteen years at a purchase price which to thought to be in the amount of approximately $4,770,000.00. The option to purchase may also be exercisable in later years, at a reduced amount. The annual rental during the renewal periods will range from $225,000.00 per annum, during the first renewal period, to $75,000.00 per annum during the last renewal period. It is my understanding that Worthen will have no obligation to renew the lease at the end of the respective initial or renewal periods.

The problems to be considered by this letter are as follows:

1. Will the lease be recognized as a valid lease for Federal income tax purposes?

2. If the lease is not recognized as a valid lease what are the tax consequences to Worthen?

3. If the lease is recognized as a lease, will the entire annual rental be deductible, or will Worthen be required to amortize the total cost of the initial term plus renewal terms of the lease evenly over all terms?

4. May Worthen obtain the benefit of the Federal income tax "investment credit"?

5. May the Arkansas sales and use tax with respect to the construction material be avoided if the institutional investor furnishes the interim construction financing as well as the permanent financing?

6. May Worthen deduct the real estate tax on the building for purposes of the ad valorem tax?

It is my opinion that the lease will be recognized as a valid lease for Federal income tax purposes; and particularly so if the institutional investor finances the con-

struction so that there is not a sale followed by a leaseback. The classification of a lease contract, which contains a purchase option, as a "lease", rather than a sale, or a mortgage transaction, is a question of the "intention of the parties as evidenced by the written agreement read in the light of attendant facts and circumstances existing at the time the agreement was made." *D. M. Haggard*, 24 T.C. 1124 (1955) affd. per curiam 241 Fed. 288. The question is basically one of "economic reality," with a finding of a sale or mortgage rather than a lease being warranted if any one of the following factors are present:

(1) Portions of the periodic payments are made specifically applicable to an equity to be acquired by the lessee,

(2) The lessee will acquire title upon the payment of a stated amount of "rentals" which under the contract he is required to make.

(3) The total amount which the lessee is required to pay for a relatively short period of use constitutes an inordinately large proportion of the total sum required to be paid to secure the transfer of the title.

(4) The agreed "rental" payments materially exceed the current fair rental value. This may be indicative that the payments include an element other than compensation for the use of property.

(5) The property may be acquired under a purchase option at a price which is nominal in relation to the value of the property at the time when the option may be exercised, as determined at the time of entering into the original agreement, or which is a relatively small amount when compared with the total payments which are required to be made.

(6) Some portion of the periodic payments is specifically designated as interest or is otherwise readily recognizable as the equivalent of interest. (Rev. Ruling 55-540, C.B., 1955-2, 39)

Applying the above test to the present situation, I am certain that the lease will be drawn in such a way as to avoid any reference to Worthen obtaining an "equity", or paying interest. Since the renewal will be at the option of Worthen, and since the purchase option at the expiration of the thirty year term will represent a substantial investment, Worthen will not acquire title upon payment of rentals which it is required to make. The rental payments appear to be the fair rental value. Moreover, and most important, the option price will be substantially equal to the fair market value of the land and building at the time of its exercise.

Two Federal court cases have validated a "lease" where there is a substantial payment required in connection with the exercise of the option.

In the case of *Breece Veneer and Panel Company* v. *Commissioner*, 232 F. 2d. 319 (1956), the R.F.C. leased a building to the taxpayer for a five year period at an annual rental of $20,000.00 per year, with the option to renew for three additional one year periods under similar terms. The lessee was given an option to purchase after five years for $50,000.00, and after the seventh year for $37,500.00, and after the eighth year for $25,000.00. The R. F. C. and the taxpayer had previously negotiated for the sale of the building with the taxpayer offering $100,000.00. The taxpayer exercised his option to purchase the land at a cost of $48,050.00. The Tax Court had relied upon the analogy of a conditional sales contract, which had been successful for it in connection with the lease of equipment and other personal property with option to purchase, in finding that the arrangement was in fact a sale rather than a lease. The Circuit Court of Appeals distinguished this case from the

other conditional sales contract cases on the basis that the taxpayer is required to make a substantial payment in addition to the lease payments in order to obtain an equity in the property. The Court concluded that since the rental which the taxpayer was required to pay was not substantially equal to the value of the goods, the arrangement was that of a lease.

In the *District Court case of Arkansas Bank and Trust Company* v. *United States*, 224 Fed. Supp. 171 (1963) the taxpayer entered into a lease with an option to purchase which the Court recognized as a valid lease and not a sale. In that case, Arkansas Bank and Trust Company, Hot Springs, Arkansas, which had just been acquired by Cecil Cupp, proposed to build a new building. However, because of its limited capital structure, it was unable to purchase the land and construct the building. It therefore entered into a lease arrangement with the option to purchase, with respect to the ground. The property which was the subject of the lease had been purchased by its owners at a cost of $125,000.00 which was allocated $25,000.00 for the land and $100,000.00 for the improvements, including a hotel and 3 one-story buildings. The bank agreed to a net lease of the ground for 15 years at a rental of $15,000.00 per year for the first 3 years, and $10,500.00 per year for the next 12 years. The bank was given an option to extend its lease for an additional 15 years at a rental of $4,200.00 per year. At any time during the renewal period the bank was given the option to purchase the property for $35,000.00. When the bank obtained possession of the property it demolished the existing facilities and erected its banking facilities at a cost of approximately $750,000.00. The Internal Revenue Service questioned the deduction for the rental payment of $15,000.00 in the first year of the lease and the income tax deficiency was paid and the claim for refund, resulting in this litigation, was filed. The Court stated that the ultimate question is whether, *at the time of the lease*, the parties intended the payments to be for the

use of the land, or whether the payments were for the purpose of acquiring an equity in the property. One factor to consider is the economic relation of the value of the property to the option price. The Court cited, with approval, the case of *Breece Veneer and Panel Company*, supra., in distinguishing this situation from the ordinary sales arrangement. Considerable testimony was taken both on the question of the rental value of the land, and on the question of the fair market value of the ground. The Court found that the rental payments were reasonable and fully deductible.

Where there is a sale followed by a leaseback with an option to purchase, the Courts have found it easier to look through the form of the sale and find that what has occurred is merely a mortgage of the property. The complete ambit of title back to the original owner reflects on the intention of the parties at the time of the transaction. In the reported Court cases, however, the leasebacks were made susceptible to a reclassification as a mortgage since they contained usual mortgage provisions, such as the payment of attorney's fees of the lessor by the lessee, assignment of rentals, and an amortization schedule specifically referring to the payment of principal and interest.

If the lease is disregarded, and the transaction treated as a sale by the institutional investor to Worthen, or as a mortgage by Worthen of its existing building to the institutional investor, then Worthen will be entitled to capitalize the cost of the building and recover the cost through depreciation over the useful life of the building. *Paul W. Frenzel*, 22 T.C.M. 1391 (1963). In addition, Worthen will be entitled to a deduction for the payment of an interest factor. If interest is separately stated and if the separately stated interest is legal, then that amount of interest will be deductible. *Commissioner* v. *Lazarus*, 101 Fed. 2d 728 (1939), affd. 308 252 (1939). Where interest is not separately stated, Courts have been granted the discretion to

allocate a portion of the payment to interest. See *Wilshire Holding Corporation* v. *Commissioner*, 252 Fed. 2d 51. Worthen will thus be entitled to an interest deduction of $450,000.00 plus depreciation of approximately $150,000.00.

Assuming that the lease is recognized as a valid lease the question still remains whether Worthen will be entitled to deduct the full amount of the rental during the initial term of the lease. Section 162 permits a deduction for a "reasonable" allowance for rent. Assuming that the rent is reasonable, Treasury Regulation 1.162-11 provides that the cost of a leasehold interest must be deducted evenly over the number of years the lease has to run. Since the rental payments under the renewal terms are less than under the initial term, the question arises as to whether rental payments must be equalized over the initial and renewal terms. However, in view of the fact that the exercise of the renewal option is *not mandatory* on Worthen, it is my opinion that the entire rental payment in the initial term may be deducted; and it will not be necessary to equalize the payments over all terms.

The Internal Revenue Service has had some success in requiring lesses to equalize rental deductions over the term of a lease; and where there is a renewal option the Internal Revenue Service has made some attempt to require an equalizing of rental payments over initial and renewal terms; but it has had success in doing so only by finding that there is a purchase rather than a lease so that the purchase is capitalized and recovered evenly through depreciation. See Revenue Ruling 60-122 C. B. 19-1, 56. In the case of *Gem, Inc.* v. *U.S.*, 192 Fed. Supp. 841, the Treasury Department attempted to require the taxpayer to equalize its deduction with respect to a plant constructed under a municipal bonding arrangement whereby at the end of the twenty year term the industry could renew the lease for a nominal amount for an additional twenty years. The Court overruled the Treasury's position on the basis that there

was no reasonable certainty that the lease would be renewed. I have previously expressed the opinion that this lease will not be recharacterized as a "purchase"; and, in view of the economic exposure, I think it is fair to conclude that there is no reasonable certainty that this lease will be renewed at the end of the initial term.

If the higher rental during the initial term of the lease is deemed to be the "cost of the lease", within the purview of Section 178 of the Internal Revenue Code, then the presumption of renewal of the lease, which is raised by that Section, might require an equalization of the rental deductions over the initial and renewal terms of the lease. However, it is my opinion that the higher rent during the initial term is not an advance rental ("cost of the lease"); and therefore that Section 178 will not be applied to this lease.

Under Treasury Regulation 1.48-4 a lessor may elect to treat the lessee as having purchased property for the purpose of "investment credit" and thereby pass the credit through to the lessee. In this manner Worthen may become entitled to the credit for purchase of new tangible personal property, including elevators and escalators, with respect to which depreciation is allowable which have a useful life of four years or more. The amount of the credit is equal to 7% of the qualified investment during the year. The qualified investment is 100% of the cost if the useful life is in excess of 8 years, 66⅔% of the cost if the useful life is 6 to 8 years, and 33⅓% of the cost if the useful life is 4 to 6 years. The amount of the credit is limited to $25,000.00 plus 50% of Worthen's liability for tax in excess of $25,000.00.

With respect to the questions of state sales tax, and deduction for ad valorem tax, a supplement to this letter will be furnished. A supplement will also be furnished with respect to the finalized agreement. If you have any questions please advise.

Very truly yours,

/s/ JOE GIROIR
C. J. Giroir, Jr.

D. Ex. 16

FINANCING METHODS

My discussion of the financing of the construction of the new building will take into consideration several plans or combinations thereof and I would like to go over these prior to discussing the results of contacts made in New York and locally with respect to the financing.

METHOD #1

Would be through the sale of convertible and/or non-convertible debentures, preferably through private placement so that the debentures would not find their way into the local market. The debentures would not improve our capital ratios if issued in amounts merely to cover construction cost and land purchase whether or not the building is carried in the banks statement or in a real estate holding company. It is doubtful that we could obtain supervisory approval for the sale of debentures in adequate amounts to finance the building in this manner. Incidentally, the advantage of convertibles over non-convertibles would be in money cost which could be as much as 1¼% depending upon the conversion price. The lower the conversion price, the larger the deferential in interest rates would be.

METHOD #2

The Second Method would be the ownership of the building and land by a wholly owned real estate holding company which would negotiate a mortgage further supported by a lease executed by Worthen Bank & Trust Co. with rentals adequate to amortize the mortgage. Probably the maximum term which could be negotiated would be thirty years and the rate would be approximately 6½% on a thirty year mortgage, which would amount to a factor of 7.59%. In other words, annual payments would amount to 7.59 times the amount borrowed. This method would enable the bank to take the depreciation and taxes as a tax write-off.

METHOD #3

The third method would be the construction of the building by the bank on the land which would be purchased with bank funds and at completion the sale of the building to an investment group at arms length with the leaseback at a fixed rental which should be in the same cost area as the mortgage arrangement. Ordinarily such arrangements provide for the rental at 50% of the original rent after 20 or 25 years and a subsequent reduction to 25% on a second renewal basis. The arrangement can also include a purchase option permitting the bank to acquire the property prior to expiration of the lease for which a premium would be paid. However, if there is such a repurchase option the bank would not be permitted to deduct the full amount of lease rental payments for tax purposes, since a portion of such rentals would be capitalized. When such an arms length transaction is made it is generally at a rental which will reimburse the owner for his full investment and would also give him a rate of return about equal to that of a mortgage. However, the income under the lesae continues during the entire term of leaseback and any renewals and at the end of that time the property belongs to the purchaser. In addition to the arms length leaseback the bank could construct the building and sell to the real estate holding company on a leaseback arrangement with the holding company arranging the mortgage financing. One advantage of this method would be keeping the construction in the banks name which would take advantage of the waiver of the 3% sales tax on materials, equipment and so forth, purchased.

METHOD #4

It is possible to arrange for a combination of the above methods and to provide means of refinancing of mortgage,

refunding of debentures and/or recapture of real estate at a price. It is the purpose of this meeting to relate these basic methods to our situation and determine the most feasible. We should keep in mind that only the sale-lease-back method would have the automatic acceptance or supervisory authorities. Any of the other methods, including combinations thereof, would require the approval of deviation from standards. It should be borne in mind that among other considerations the building should be handled in such a manner that the 3% sales tax does not apply to purchases of materials, etc.

Now I will go into conversations I have had with various mortgage brokers, investment brokers and New York Life Insurance Company with respect to handling our financing.

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WORTHEN BANK & TRUST COMPANY
THE BANK THAT DOES MORE FOR YOU
Inter-Office Correspondence

From: Richard F. Gates

To: Edward M. Penick

Date: August 11, 1967

Subject: Report of Trip to New York refinancing of our new bank structure.

I discussed methods of financing with Mr. Eric Schmidt, head of the real estate division of First National City Bank, and Ray O'Keefe in the same position at Chase Manhattan, calling on the mortgage bankers we had selected for contact. Following is a report of the contacts made.

White, Weld & Co., 20 Broad Street—I met with Mr. A. M. White, Mr. George Moore, Jr., Buck Remmel, and John Cervantes (real estate consultant).

1. They suggested that convertible debentures be issued in at least sufficient amount to cover purchase of the land or in lieu thereof the land be sold to an investor and leased back on a 99 year lease with an option to repurchase the land at some future date at its original sale price. They thought this might be accomplished in the area of 6% and ¾% brokerage.
2. Suggested mortgaging building through a holding company, rate not discussed.
3. Broker will need to revise Landauer's figures with respect to capitalizing income by raising the bank's sufficient amount so that the transaction will capitalize at 8%. This is a mechanical matter, but probably important in negotiating a mortgage.

I was impressed with the quality of the people I talked to and in checking them out with First National City was informed that they are quite capable in the investment financing field, but doubted their ability in the mortgage financing. This remark was made by Mr. Eric Schmidt in spite of the fact that I told him we would have an interest, all things being equal, in working with White, Weld by reason of a connection between Mr. George Moore and his son in the business.

Hubbard Westervelt & Mottelay, Inc., 60 E. 42nd Street—I met with James D. Price and senior partner, Mr. Hubbard. After checking their reputation with First National City, they rate them as excellent in their field.

1. They recommend sale and leaseback of land to a pension fund with option to buy back at anytime, probably 6¼% rate.
2. Either a conventional mortgage or a one purpose corporation to be organized by their firm. The one

purpose corporation would negotiate for funds subject to our approval, 30 year amortization with option to purchase stock in the interim or a zero balance in 30 years. In the interim, of course, a stock purchase would involve paying off the unamortized amount. They would have an over-ride amounting to quarterly advanced rental payments.

Books, Harvey & Co., 41 E. 42nd Street—Talked to Arthur Bailey, Mr. Thomas, Mr. McHugh, and several other members of the firm and was impressed with their contacts and knowledge in the field. They were given an excellent rating by First National City. Their recommendation followed closely the recommendations of the White, Weld. They emphasized that through the connection of two of their partners, who are directors in mutual savings banks, that placement might be at a more favorable price with a mutual savings bank.

New York Life Ins. Co., 51 Madison Avenue—Talked with Eugene S. Overshine and got the impression that they felt leasing problems might exist by reason of their experience in the Tower Building. Therefore, although they quoted definite terms, I inferred that perhaps these rates were based on their preconceived ideas with respect to leasing. On a conventional basis, that is a loan of 75% based on appraisal, could be made for 30 years at 6-½%. However, if we required 100% financing, the rate would be 6-¾% with no prepayment for 10 years. After the 10th year prepayments could be made at a penalty of 6-½%, on the 11th year, then each year thereafter the penalty would decline by a .3375%.

They would consider purchasing the land and leasing it back on a 99 year basis without options on the bank to recapture. Furthermore, after I returned to my hotel, he called and said that each 33 years the land would have to be reappraised and the rent raised if the appraised value

had increased, but if the appraised value decreased, there would be no concession. To me that was the crowning blow.

He asked for a ½% per year standby fee, but after some discussion said that this could be waived.

We would be required to pay all expenses incurred by them in working the loan out including legal fees.

J. Halperin & Co., Inc., 375 Park Ave.—Their discussions followed much the same pattern as the others including the recommendation that the sale of convertible debentures be included in the picture. They thought that the cost of convertible money would be at least 1% less than a straight debenture rates and that the rate would be in the area of 6-½%. I do not consider this firm of the same caliber as the top three in this memo.

Chase Manhattan Bank, 1 Chase Manhattan Plaza—Talked with Raymond O'Keefe, senior vice president—Did not obtain much information here except he offered services of Adam C. Heck, vice president and chief tax accountant, and Jess Lawrence, assistant tax expert.

Chemical New York Bank & Trust Co., 20 Pine Street—with Hugh Jones, Jr.—Without solicitation they indicated they would like to help with the interim financing and understood, of course, that First National is our principal bank and would participate with them if they so desired.

First National City Bank—Talked to Alan Peters and met new man, Bob Stokke, Dan Haskins is no longer assigned to us. We discussed our building program at some length. When I completed our other calls I returned to First National City and again discussed the entire matter with the manager of their investment division, Eric Schmidt. I have outlined Mr. Schmidt's remark with respect to the above, but he agreed that the first three names in this memo were tops in their field and would have access to

more different types of lenders than the others. First National City stated they would handle the interim financing. I explained Chemical's offer and apparently they would be glad to share the interim financing with Chemical.

I made several other calls of no consequence and feel that it is necessary to move quickly in tying down the financing for two reasons. One, with the exception of Mr. O'Keef, all those I talked to feel interest rates are headed upward and that although New York Banks' have been off in the last several weeks, most of them have heavy fall commitments. Second, I got the impression that they all felt that if we are going to start construction within 60 days, it is going to be quite a job working out the financing and other technical matters involved therewith.

RFG/mab